

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA No. 427 of 2015 (O&M)
Date of Decision: 04.02.2015**

Bohar Singh & Anr.

... Appellants

vs.

Nishan Singh & Anr.

... Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. S.K. Arora, Advocate
for the appellants.**

ANITA CHAUDHRY, J.

This regular second appeal is preferred by the defendants. The parties are being referred as they were before the lower Court.

Nishan Singh filed a suit seeking specific performance of agreement dated 27.12.2006 executed by Sukhdev Singh in his favour. An earnest money of Rs.75000/- out to total sale consideration of Rs.1,50,000/- had been paid. It was his case that the date for execution of the sale-deed was 16.05.2007, but Sukhdev Singh respondent No.2 here failed to turn up before the Registrar for executing the sale deed. It came to his notice that Sukhdev Singh had sold the suit land to the present appellants vide sale-deed dated 15.01.2007.

Upon notice, the defendants denied the execution of agreement dated 27.12.2006. The appellants took the plea of bonafide

purchaser and a prior agreement dated 11.10.2006 in their favour. They claimed that they had paid the earnest money of Rs.90,000/- and possession of the suit land was delivered to them.

The lower Court framed issues and parties went to trial. The plaintiff appeared as his own witness as PW1 and examined Jagroop Singh, the attesting witness to the agreement.

The defendants failed to lead any evidence.

The trial Court on the basis of evidence led by the plaintiff recorded a finding that respondent No.2 had duly executed an agreement dated 27.12.2006 in favour of the plaintiff while no agreement dated 11.10.2006 was proved either by the seller or the alleged subsequent purchasers(appellants). Finding the same to be a sham transaction, it was held that the plaintiff remained ready and willing to perform his part of the contract while respondent No.2 executed the sale deed in favour of the appellants just to frustrate the rights of the plaintiff. The sale-deed in favour of the appellants was set aside and respondent No.2 was directed to execute the sale-deed in favour of respondent No.1 after receiving the balance sale consideration within a period of three months. The suit was decreed and the appeal filed by the appellants was dismissed by the lower Appellate Court.

The appellants failed to adduce any evidence. They failed to step into the witness box. The agreement dated 11.10.2006, on the basis of which the appellants claimed a right was not produced or proved. Except the bald assertion in the written statement, no evidence

was led to prove that the agreement dated 27.12.2006 in favour of plaintiff was a result of fraud and misrepresentation. In this scenario, no other view could have been taken. There is no reason to interfere with the concurrent findings recorded by the Courts below which are neither illegal nor perverse. The findings are affirmed. No substantial question of law arises for consideration in this appeal. Dismissed.

04.02.2015

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**(ANITA CHAUDHRY)
JUDGE**