

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.5946 of 2015 (O&M)
Date of Decision: December 05, 2015.**

Ashok Kumar

.....APPELLANT(s).

VERSUS

Jeetwati and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vinod S. Bhardwaj, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is second appeal against the judgment and decree passed by Civil Judge (Senior Division), Faridabad whereby the suit of the plaintiff Jeetwati (now respondent No.1 in this appeal) was decreed and the sale deed dated 24.03.2008 regarding 7 kanals 5 marlas of land executed by defendants No.1 to 5 in favour of defendant No.6 was declared as null and void and set aside. The plaintiff was allowed the relief of specific performance of the agreement to sell dated 20.11.2007 with regard to the suit land on payment of balance sale consideration and defendants No.1 to 5 were directed to execute the sale deed in favour of plaintiff.

(In the later part of the judgment, parties will be referred as plaintiff and defendants as in the original suit).

2. The case of the plaintiff, in brief, is that defendants No.1 to 5

along with Sangeeta minor daughter of Birender Singh entered into an agreement to sell their 1/2 share in the land measuring 17 kanals 8 marlas i.e. 8 kanals 14 marlas, at the rate of ₹29,50,000/- per acre and received ₹10 lacs as earnest money. The sale deed was to be executed within one month after obtaining permission from the Court for sale of share of minor Sangeeta. A petition was filed in the Court seeking permission to sell the share of the minor. Thereafter, defendants took another amount of ₹3 lacs from the plaintiff as they required money for the marriage of Asha defendant and minor Sangeeta, which was to be held on 08.03.2008. A payment of ₹3 lac was made by the plaintiff after verifying the facts against receipt. The plaintiff has always been ready and willing to perform her part of the contract and requested the defendants several times to execute the sale deed but they kept the matter pending on the pretext that requisite permission is to be taken from the Court. Later on, it transpired that defendants No.1 to 5 in connivance with defendant No.6 have transferred their share in favour of defendant No.6 vide sale deed dated 24.03.2008 and when the plaintiff confronted the defendants No.1 to 5 about this fact, they refused to honour the terms and conditions of the agreement to sell dated 20.11.2007 resulting in filing of the suit.

3. Defendants No.1 to 5 did not contest the suit and were proceeded against ex parte. Defendant No.6 contested the claim of plaintiff in his written statement. He took the plea that he was a bona fide purchaser of the suit land for a valuable consideration of ₹4,53,000/- vide sale deed dated 24.03.2008 without notice of the alleged agreement. He termed the agreement in favour of plaintiff as false, forged and fabricated document not

binding upon his rights.

4. Learned Civil Judge (Senior Division) Faridabad on appraisal of evidence recorded the finding that agreement to sell dated 20.11.2007 was executed by defendants No.1 to 5. The plea of defendant No.6-appellant that he was a bona fide purchaser, was discarded on the grounds as follows:-

(i) The agreement of the suit land with plaintiff was at the rate of ₹29,50,000/-per acre while defendant No.6 had purchased the same (7K-5M) for ₹4,53,000/-.

(ii) The plea of defendant No.6-appellant that he was not related to defendants No.1 to 5 was found false as he had admitted in his cross-examination that Birender Singh, husband of defendant No.1 and father of defendants No.2 to 5 was his maternal uncle and defendants No.1 to 5 are his close relatives.

(iii) DW2 Pritam had admitted that Rajvati, defendant No.1 is maternal aunt of appellant.

(iv) Raju defendant No.2, who was ex parte, was also present in the Court and had gone to his house after meeting Shri P.L. Goel, Advocate, counsel for the appellant in the lower Court.

(v) Defendants No.1 to 5 were found colluding with defendant No.6 (appellant) after receiving ₹13 lacs out of total sale consideration, which was duly proved on record.

5. The first Appellate Court while affirming finding of lower Court has also taken note of the fact that there was nothing on record that any earnest money was paid by defendant No.6 to defendants No.1 to 5, who had

also not pleaded any agreement to sell in his favour. There was no evidence

on file about the payment of any sale consideration beyond the sale price mentioned in the sale deed executed by defendants No.1 to 5.

6. On perusal of the judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

7. Before the first Appellate Court, the appellant has sought permission to produce additional evidence to prove agreement to sell executed by defendants No.1 to 5 in his favour.

8. In view of the observations of the Courts below, it was a case of collusion between defendant No.6 and defendants No.1 to 5. No agreement in his favour was pleaded by defendant No.6 in his written statement, as such, the first Appellate Court has rightly declined the application for additional evidence with the observations that no evidence beyond pleadings could be produced on record.

9. No substantial question of law requiring determination arises in this appeal, which has no merits.

10. Dismissed.

December 05, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE