

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

Regular Second Appeal No.3434 of 2014 (O&M)

Date of decision: **30**.10.2015

Makhan Singh and others

... Appellants

versus

Pritpal Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Mohit Setia, Advocate,
for Mr. Gaurav Chopra, Advocate,
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J.

1. The plaintiffs whose suit for specific performance was dismissed both at the trial court and at the appellate court are the appellants in the second appeal. This suit for specific performance of an document dated 17.05.2005 was founded on a plea that the 1st defendant had undertaken to execute the sale deed in their favour after receiving an advance of ₹4,25,000/- on the date of the agreement. According to the plaintiffs, on the day which was specified for completion of the sale, they had gone to the Registrar's office being ready and willing to pay the balance of money and

secure the sale deed but the defendant did not come to the Registrar's office. The plaintiffs claimed that they had their presence marked and an affidavit filed and attested by the registering officer on that day. The 1st defendant failed to turn up but fraudulently sold the property to defendants 2 to 5. The plaintiffs' contention was that the purchase by defendants 2 to 5 was not valid and they are not bona fide purchasers for value without notice of the agreement in favour of the plaintiffs.

2. The 1st defendant remained ex parte. The principal contest was taken by the defendants 2 to 5. They denied that there was any valid agreement in favour of the plaintiffs. The case was required to be, therefore, considered on the most crucial issue of whether the agreement set up by the plaintiffs was true or not.

3. The trial court and the appellate court found several fallibilities about the agreement prepared and filed by the plaintiffs. The defendants' contention was that the document itself had been prepared only on 31.02.2006 on stamp papers purchased on that day but antedated as 17.05.2005. The defendants pointed out to the fact that the stamp paper that had been written on a high value denomination of ₹500/- and there was no proper explanation as to why such a high value of stamp paper had been used. DW1 was the stamp vendor who admitted to the fact that he had sold 7 stamps on that day as per the entry but he had to admit in the cross-

examination that he had only one 500 rupee stamp as per the register. Even the entry had been later scored out. The court found that PW1-the stamp vendor had not been able to clearly explain the discrepancies found in the register and the reasons why there had been several cuttings and markings in the register. PW2, who was the clerk at the Registrar's office, had admitted to the fact that at the time when the affidavit was prepared by the plaintiffs and got noted of their presence, the plaintiffs had not the money in their hands and they had not verified whether plaintiffs had kept the money ready for completion of the sale and registration formalities. PW4 was an advocate who was said to have prepared the document but admitted that he did not read the recitals of the document to the parties. He stated that he was informed that the scribe had read over the recitals to the parties. He also was unable to explain as to why ₹500 denomination of the stamp papers had been used. DW6, the 2nd plaintiff, was himself unable to explain whether the document had been written on stamp papers or blank papers. With all such defects in the evidence of the plaintiffs, the trial court found that the agreement had not been proved and dismissed the suit. The appellate court also confirmed the same.

4. The contentions raised in the grounds of appeal are that the defects in the stamp register could not be attributed to the plaintiffs and they cannot have any bearing on the validity of the

agreement. Explaining the lack of evidence regarding whether the plaintiffs had the money ready with them at the time when they were supposed to have been present at the Registrar's office, the appellants were attempting to state that it was not a necessary formality for the registering officer to vouch for the vendee's financial resources. If the plaintiffs were using the document only to show their readiness and willingness, want of the appropriate evidence about the financial resources as available on that day was surely relevant. The evidence of the lawyer that he could not recall whether the recitals were read over to the parties was also attempted to be downplayed by the appellants. All that the appellants would state as a strong point in their favour was only that the 1st defendant remained ex parte. I can hardly find anything worthwhile to support the plaintiffs' case by the absence of the 1st defendant. In fact the plaintiffs were bound to prove the agreement and if there was no case of collusion between the 1st defendant and other defendants, the plaintiffs themselves were required to examine the 1st defendant. If the circumstance under which the 1st defendant came to execute an agreement in their favour and also execute subsequent sales in favour of the defendants gave the inference that the 1st defendant was acting against the plaintiffs' interest, I find no virtue about the fact that the 1st defendant remained ex parte to accept the plaintiffs' case as true.

5. The truth of the agreement has not been properly established and the payment of the advance as entered in the document has also not been brought out clearly. The dismissal of the suit by the trial court and the confirmation of the judgement appellate court accord with the quality of evidence that the plaintiffs had put forward in court. I find no cause for intervention in second appeal

6. The second appeal is dismissed as devoid merits and as raising no substantial question of law for consideration.

(K.KANNAN)
JUDGE

30.10.2015

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