

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

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Regular Second Appeal No.4981 of 2014 (O&M)

Date of Decision: September 17, 2015

Gurdial Kaur and others

...Appellants

Versus

Santokh Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Varun Garg, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Sunam, dated 04.11.2011 by which the suit filed by the respondents-plaintiffs for recovery of an amount of ₹3,32,812/- with interest at the rate of 9% per annum from 11.06.2004 till the date of judgment and decree with further future interest on the principal amount at the rate of 6% per annum till realisation, stands decreed. Appeal against which preferred by the appellants-defendants stands dismissed by the Additional District Judge, Sangrur, on 25.03.2014.

2. It is the contention of learned counsel for the appellants-defendants that the respondents-plaintiffs entered into an agreement to sell with the appellants-defendants on 28.01.2004. The details of the land proposed to be sold as per that agreement to sell were mentioned therein. On the basis of the said agreement to sell, sale deed was executed on 11.06.2004 of the same very land which was a subject matter of the agreement to sell. He contends that at the time of execution of the sale deed, it was the responsibility of the respondents-plaintiffs to verify the title and the area of the land which was a subject matter of the agreement to sell and

ultimately the sale deed. Having not taken the due care and caution, the present suit for recovery could not have been filed on the ground that in the agreement to sell and in the sale deed, Khasra No.184//24 and 25 has been scribed twice over as also in the jamabandi. The respondents-plaintiffs having not been careful and cautious about their rights, cannot now turn around and claim the said recovery. He places reliance upon the judgment of the Supreme Court passed in the case of *Commissioner of Customs (Preventive) Versus Aafloat Textiles India Private Limited and others* 2009(11) SCC 18 in support of his contention. He urges that the maxim “*Caveat emptor qui ignorare non debuit quod jus alienum emit*” according to which the purchaser has to be aware and ought not to be ignorant that he is purchasing the rights of another. He, therefore, contends that the judgments and decree passed by the Courts below deserve to be set aside.

3. I have considered the submissions made by learned counsel for the appellants-defendants but could not persuade myself to accept the same in the light of the fact that Khasra No.184/24 and 25 has been scribed twice in the agreement to sell as also in the sale deed and similarly in the jamabandi. It is also not disputed that the land in this Khasra number is 10 kanals and 13 marlas, which admittedly has been sold twice over if the sale deed is seen. If that be so, the same land could not have been sold twice by the appellants-defendants and having received an amount of ₹3,32,812/- in excess for 10 kanals and 13 marlas, possession whereof could not have been delivered by the appellants-defendants, the findings recorded by the Courts below cannot be faulted with. The maxim on which reliance has been placed by learned counsel for the appellants-defendants would not apply to this case as it pertains to a situation which has been elaborated by the Supreme

Court in para 24 of the said judgment, which reads as follows:-

“24. As the maxim applies, with certain specific restrictions, not only to the quality of, but also to the title to, land which is sold, the purchaser is generally bound to view the land and to enquire after and inspect the title deeds; at his peril if he does not”.

4. A perusal of the above would show that it primarily puts a responsibility on the purchaser and it deals with the title of the property. The said aspect is not in dispute in the present appeal and in any case, in the admitted facts and circumstances of the present case, as has been recorded above, the judgments passed by the Courts below cannot be said to be not in accordance with law. It may be added here that the appellants-defendants cannot be granted a benefit which they are not entitled to. An undue, unjust enrichment which is sought to be made through the process of denying the claim of the respondents-plaintiffs and that too at the hands of the Court cannot be permitted. Court cannot accept such a stand and be a party to such illegal and unreasonable plea which would be a fraud and would be perpetuated if not set right.

5. Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

6. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

7. In the light of the dismissal of the appeal itself, the application for stay i.e. CM No.11742-C of 2014, also stands disposed of as infructuous.

September 17, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE