

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

RSA No.2003 of 1990 (O&M)

Date of decision : 30.11.2016

Swaran Singh

...Appellant

Versus

Kamar Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Avnish Mittal, Advocate for the appellant.

Mr. B.S. Malik, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby relief in suit seeking specific performance of agreement to sell dated 02.08.1985 had been granted in his favour by the trial Court by decreeing the suit, but the same has been set aside in appeal.

Mr. Avnish Mittal, learned counsel appearing on behalf of appellant-plaintiff submits that agreement to sell was in respect of half share of land measuring 5 kanals 8 marlas i.e. 2 kanals 14 marlas for a total sale consideration of ₹9540/- against the payment of earnest money of ₹1000/-. The stipulated date for execution and registration of the agreement to sell was 30 days from the date of sanctioning of the partition proceedings.

However, during the currency of the agreement, much less, before the date i.e. 09.02.1986, the defendant No.1-Durgi Devi-Vendor sold the property in dispute to the defendant Nos.2 to 5 vide sale deed No.225 dated 13.08.1985 for an amount of ₹7000/- which is evident from Ex.D1, in essence, it was distress sale. Legal notice in this regard was sent on 19.08.1985 and suit filed was on 03.09.1985. The trial Court found that the appellant-plaintiff had been always ready and willing to perform his part of the agreement to sell, though, agreement was denied but the same was found to have been entered into, in essence, Durgi Devi failed to discharge the onus qua her part performance of agreement to sell, much less, receipt of the earnest money. The aforementioned judgment and decree was assailed by the Vendors-defendant Nos.2 to 5 on the premise that they were bona fide purchasers for valuable consideration. He submits that subsequent vendees are none else but the resident of same village and, therefore, it cannot be remotely accepted that they had no knowledge of the agreement to sell as in those days, population was less and whatever happened in the village was known to all. The lower Appellate Court allowed the appeal in most erroneous and perverse manner holding the subsequent vendees to be bona fide purchasers without even ordering for sale consideration but granted the alternative relief.

Whereas Mr. B.S. Malik, learned counsel appearing on behalf of respondents submits that judgment rendered by the lower Appellate Court is perfect, legal and justified. There is no illegality and perversity. The appellant-plaintiff failed to lead evidence that respondent-defendants-subsequent vendees were not the bona fide purchasers.

I have heard learned counsel for the parties and appraised the paper book.

Before I could give my reasoning, I called upon Mr. Avnish Mittal, learned counsel appearing on behalf of appellant-plaintiff that whether his client would be willing to compensate defendant Nos.2 to 5-subsequent vendees in terms of money as agreement to sell is of year 1985 and this query had been raised by relying upon the ratio decidendi culled out by Hon'ble Supreme Court in *Nanjappan Vs. Ramasamy and another, 2015 (2) RCR (Civil) 224*. Mr. Avnish Mittal, Advocate has taken instruction from his client, submits that even market value of the property would not be more than ₹15,00,000/- but his client is not willing to compensate.

Keeping in view of the aforementioned fact, I am of the view that suit cannot be decreed at this stage as it tantamounts to putting the clock back. Defendant Nos.2 to 5 were already in possession and enjoying the possession of the land and fruits of the same. However, while setting aside the judgment and decree rendered by the trial Court, lower Appellate Court has not taken into consideration the element of interest.

Accordingly, judgment and decree of the lower Appellate Court is modified. There shall be interest at the rate of 9% p.a. from the date of payment till the realisation.

With the aforementioned modification, decree sheet is ordered to be prepared.

RSA stands disposed of.

Mr. Avnish Mittal, Advocate also submits that in view of the fact that balance sale consideration already stood deposited, he also be

entitled to seek the refund of the same, in case it is deposited in FDR and shall be entitled to interest thereon also.

Ordered accordingly.

30.11.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No