

In the High Court of Punjab and Haryana at Chandigarh

**ESA No. 7 of 2016(O&M)
Date of Decision: 28.1.2016**

Pargat Singh

---Appellant

versus

Sawan Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. P.S.Jammu, Advocate
for the appellant**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal (ESA) has been directed against order dated 14.1.2016 passed by the Additional District Judge, Sirsa whereby the appeal preferred by the appellant against order dated 1.12.2015 passed by the Civil Judge (Senior Division), Sirsa vide which the objections filed by the appellant have been rejected, has been dismissed.

Sawan Singh, respondent No. 1 filed a suit seeking specific performance of the agreement of sale. The trial court decreed the suit to the extent of allowing alternative relief of recovery along with interest. Sawan Singh preferred an appeal for rejection of his claim in regard to specific performance of the agreement which came to be allowed by the Additional

District Judge, Fast Track Court, Sirsa. The regular second appeal preferred by Bahadur Chand, judgment debtor now represented by his legal heirs was dismissed by this Court and as a consequence, the judgment and decree passed by the court in appeal stand affirmed.

Counsel for the appellant contends that the suit property i.e. Plot measuring 10 marals 3½ srsai i.e. 320 square yards was purchased by the appellant vide sale deed No. 2083 dated 5.8.2004 for a valuable consideration without notice of the pending proceedings and he is in actual and physical possession of the said plot. It is argued that as the appellant was not aware of litigation pending between Sawan Singh and Bahadur Chand, he being bona fide purchaser for consideration without notice is entitled to protection under Section 41 of the Transfer of Property Act.

Another submission made by counsel is that the agreement propounded by decree holder Sawan Singh is the result of collusion therefore, any such agreement or the judgment and decree passed by the court on the basis of said agreement is not binding upon the rights of the appellant. In addition, it is submitted that the suit filed by Sawan Singh seeking specific performance was decreed only qua recovery of money alongwith interest. The property in question was purchased by the present appellant much prior to claim of the respondent/decreed holder for specific performance of the agreement was accepted vide judgment and decree dated 18.7.2008 passed by the court in appeal.

I have heard counsel for the appellant, perused the records and find no merit in the appeal.

It is an undisputed position of the case that Sawan Singh filed

the suit for specific performance of the agreement purported to be executed by Bahadur Chand-judgment debtor in the year 1996. The suit was disposed of by the trial court in the year 2004 vide judgment and decree dated 16.4.2004 and he was allowed alternative relief of recovery of money. Sawan Singh filed an appeal on 17.5.2004 which was disposed of by the appellate court vide judgment and decree dated 18.7.2008 modifying the judgment and decree passed by the trial court and accepting claim of the decree holder for specific performance of the agreement to sell. The judgment and decree passed by the appellate court has been affirmed in appeal by this Court.

The objector/appellant purchased the property in question during pendency of the appeal before the court of District Judge, Sirsa. The appeal was continuation of the suit filed by the decree holder. Any transfer of the suit property during pendency of appeal would be hit by the principles of lis pendence as has been held by the courts below. The plea of bona fide purchaser for consideration without notice is not available to transactions which are affected during pendency of litigation in a court of law. The mere fact that initially the suit was decreed for alternative relief will not make any difference in the circumstances as the judgment and decree passed by the trial court was modified in appeal and the decree holder was allowed specific performance of the agreement to sell. The plea of the appellant that the agreement to sell propounded by Sawan Singh is the result of collusion or to cause prejudice to the rights of the appellant, is misconceived and merits out right rejection. Sawan Singh filed the suit for specific performance on the basis of agreement dated 27.11.1996 a long

before the appellant came into picture on the basis of purchase made in the year 2004 vide alleged sale deed dated 5.8.2004 during pendency of appeal. Analyzed from any angle, I do not find any error much less illegality in the consistent findings recorded by the courts below as would call for intervention.

For the foregoing reasons, finding no merit, the appeal is dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

28.1.2016

PARAMJIT