

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

RSA No.2953 of 2010 (O&M)

Date of decision : 01.12.2016

Jormal

...Appellant

Versus

Yahya and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.**

Present: Mr. Deepak Manchanda, Advocate for the appellant.

Mr. Jai Bhagwan, Advocate and

Mr. Kanwal Goyal, Advocate for respondent No.1.

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**AMIT RAWAL, J. (Oral)**

The appellant-defendant No.2 is aggrieved of the concurrent findings of facts, whereby suit seeking specific performance of agreement to sell dated 15.04.1999 in respect of land measuring 10 kanals 11 marlas agreed to be sold for a total sale consideration of ₹1,00,000/- stated to have paid the entire amount at the time of the execution of the same, has been decreed by both the Courts below.

Mr. Deepak Manchanda, learned counsel appearing on behalf of appellant-defendant No.2 submits that respondents-plaintiffs were not ready and willing to perform their part of agreement to sell and the appellant is bona fide purchaser of the land measuring 12 kanals 4 marlas and stated to have purchased vide two sale deeds dated 22.06.2000 and 01.08.2000 for

a total sale consideration of ₹1,70,000/-. The Courts below have not appreciated the fact that the appellant is bona fide purchaser for a valuable consideration as Kamru did not disclose the existence/execution of the agreement to sell. The respondents have filed the suit almost after one year of the execution of the sale deed, therefore, discretion under Section 20 could not have been granted. No doubt, Kamru had denied the execution of agreement to sell but subsequent vendee can take up all the pleas available to the vendor. The possession has not been proved and thus urges this Court for setting aside the findings under challenge.

Mr. Kanwal Goyal and Mr. Jai Bhagwan, learned counsels appearing on behalf of respondent No.1 submits that receipt of payment of ₹1,00,000/- has not been disputed by the vendor Kamru. Agreement to sell has been proved through the testimony of attesting witnesses. Time was not essence of the agreement. Having realized the breach, the suit was filed and the same could not have been said to be barred by law of limitation. Plea of readiness and willingness is not available to the plaintiff in view of the denial of the agreement to sell. Even scribe has also been examined and nothing contrary surfaced and thus urges this Court for affirming the findings under challenge.

I have heard learned counsel for parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Deepak Manchanda, for, no direct, cogent or corroborative evidence has been led with regard to the plea of bona fide purchaser, as admittedly, parties to the lis are resident of the same village. Having failed to lead aforementioned evidence, Courts below had occasion to ponder upon the

aforementioned fact and declined the plea. The suit cannot be said to be barred by law of limitation as it was filed within one year from the date of alleged breach i.e. the date of execution of the sale deed, *ibid*. Appeal was also accompanied by an application seeking condonation of delay of refiling of 586 days, though same has been allowed. Be that as it may, but the fact remains that appellant-defendants have not been able to even shatter the consistent and cogent evidence led by the plaintiff qua readiness and willingness and exercise of discretion. Concurrent facts are based upon preponderance of evidence.

There is another aspect of the matter, in cross-examination, appellant spilled the beans of having not made reasonable enquiry regarding the existence of the agreement.

I do not intend to differ with the same.

No ground for interference is made out.

Accordingly, present appeal is dismissed.

Original record of the Courts below be sent back.

**01.12.2016**

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**(AMIT RAWAL)  
JUDGE**

**Whether speaking/reasoned:-**

**Yes/No**

**Whether reportable:-**

**Yes/No**