

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

RSA No.3212 of 2010 (O&M)

Date of decision : 17.03.2016

Amrik Singh

...Appellant

Versus

Man Singh (deceased through LRs) and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Sandeep Khunger, Advocate for the appellant.

Mr. N.K. Manchanda, Advocate for respondent Nos.2 and 3.

AMIT RAWAL, J. (Oral)

CM No.9398-C of 2010

For the reasons stated in the application, which is duly supported by an affidavit, delay of 15 days in refiling the present appeal is condoned.

Application is allowed.

Main Case

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby in suit for specific performance, discretionary relief under Section 20 of the Specific Relief Act and refund of earnest money along

with interest, has been declined.

Mr. Sandeep Khunger, learned counsel appearing on behalf of appellant-plaintiff submits that agreement to sell dated 04.05.1999 in respect of land measuring 12 kanals 9 marlas was for total sale consideration of Rs.2,18,000/- and against which a sum of Rs.1.0 lac as earnest money and thereafter, sum of Rs.50,000/- was paid. The stipulated date of registration and execution of the agreement to sell was 15.06.2000. However, during the pendency of the aforementioned agreement to sell, defendants-Vendor, on the basis of the false and fabricated agreement to sell dated 18.10.1999 (Ex.D2) dated 21.09.2000 (Ex.D5) sold land measuring 8 kanals 11 marlas and measuring 3 kanals 18 marlas respectively, thereafter suit for permanent injunction dated 20.10.1999 was filed which was withdrawn on 24.05.2001 with a liberty and accordingly, the suit for specific performance was filed on 25.05.2001. Both the Courts below have concurrently held that there was readiness and willingness, much less, agreement to sell has been proved yet assigned no reasons in not granting discretionary relief. In support of his contention, he has relied upon following case law:-

Roshan & Others Vs. Mamo and others, 1987 PLJ 385.

to suggest that once the agreement to sell on the basis of which the subsequent vendees have derived interest on the basis of the sale deed, they cannot be termed as bonafide purchaser and thus urges this Court to formulate following substantial questions of law:-

1. Whether the Courts below erred in law and fact in not granting discretionary relief of Section 20 of the Specific Relief Act?

2. Whether in the absence of the challenge to the findings vis-a-vis readiness, proving of the agreement, respondent-defendant can be permitted to belie the contents of the agreement.

Mr. N.K. Manchanda, learned counsel appearing on behalf of respondent-defendant submits that plaintiff has miserably failed to prove that defendants are not bonafide purchaser, in essence, it has not been pleaded that they had knowledge of the agreement to sell dated 04.05.1999. Both the Courts below have concurrently held and gave finding in favour of defendants vis-a-vis return of earnest money, thus, there is no illegality and perversity, much less, no substantial question of law arises for determination by this Court.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is merit in the submission of Mr. Khunger, for the reasons that both the Courts below given a finding vis-a-vis compliance of Section 16(c) of 1963 Act, much less, proving of the agreement. Defendant has not lead any evidence to disprove the signatures on the agreement to sell. It has also come on record that alleged agreement to sell Ex.D1 dated 13.08.1998 was allegedly executed to defeat the rights of the plaintiff. Once the said findings are accepted, which has not been assailed, subsequent vendees cannot claim the defence, much less, benefit under Section 41 of the Transfer of Property Act and they have to swim and sink in the same manner as the defendants face the wrath of discretionary relief. At the best, they have right to claim damages against the defendants. Having not disclosed vis-a-vis readiness and willingness, it has surfaced that registration and execution of the first sale deed is dated 18.10.1999

Ex.D2. Suit for injunction was filed on 20.10.1999 which was withdrawn as noticed above, thus there has been readiness and willingness throughout before filing of the suit and during the pendency of the suit, in my view these facts have not been noticed by the Courts below in not granting discretion whereas discretion ought to have been granted.

Keeping in view the aforementioned facts and circumstances, suit of the appellant-plaintiff in toto is decreed, in essence, they are entitled to specific performance of the agreement to sell. Defendant is directed to execute and register the sale deed within a period of two weeks on deposit of the balance sale consideration within the same period failing which the appellant will be entitled to seek execution and registration through the process of Court.

Decree sheet be prepared accordingly.

Questions of law as noticed above are answered in favour of appellant -plaintiff and against the respondent-defendants/LRS.

Appeal is allowed.

17.03.2016

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**(AMIT RAWAL)
JUDGE**