

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

R.S.A.No.4027 of 2011 (O&M)

Date of Decision: November 15, 2016

Pawan Kumar

...Appellant

Versus

Smt.Mesho Devi & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

**Present: Mr.Sanjiv Gupta, Advocate,
for the appellant.**

**Mr.Sandeep Moudgil, Advocate,
for respondent Nos.1 to 4.**

AMIT RAWAL, J. (Oral)

Appellant-defendant No.9 is aggrieved of the judgments and decrees rendered by both the Courts below, whereby the suit seeking specific performance of the agreement to sell dated 24.8.2000 in respect of land measuring 1 kanals 15 marlas, has been decreed and the sale deed dated 27.5.2002 has been set-aside.

Mr.Sanjiv Gupta, learned counsel for appellant-defendant No.9-subsequent vendee, submits that the vendors, namely, Guddi Devi and others had entered into an agreement with the plaintiffs in respect of the land, aforementioned, at the rate of ₹2,45,000/- per acre against payment of earnest money of ₹10,000/-. The stipulated date for execution and registration of the sale deed was 13.12.2000. As per the averment in the plaint, on aforementioned date, another sum of ₹16,000/- stated to have been paid on the premise that the sale deed would be executed as and when

the vendors obtained the permission from the Court as the property was in the name of minors also. The vendors had obtained the permission as per the judgment and decree dated 17.5.2002 and it is in this backdrop of the matter, the sale deed in favour of the appellant-subsequent vendee was executed on 27.5.2002.

He further submits that the agreement to sell between the plaintiffs and the vendors indicated that in case the vendors do not execute the sale deed, the vendee shall be entitled to double the amount and the compensation and, thus, urges this Court that instead of decreeing the suit, the plaintiffs should have been compensated in terms of money. In fact, the appellant is a bonafide purchaser for a valuable consideration as he was not aware of the aforementioned agreement to sell. The sale deed was entered into after verifying the revenue record. There is no reflection of the agreement to sell in the revenue record.

Mr.Sandeep Moudgil, learned counsel for respondent Nos.1 to 4 submits that the concurrent findings of fact cannot be interfered with unless and until there is gross illegality and perversity. The vendors did not disclose the date of decree dated 17.5.2002 enabling the plaintiffs to file the suit. On acquiring the knowledge, the suit, aforementioned, was filed on 8.6.2002, i.e., without any further delay. The Courts below have appreciated the oral and documentary evidence. The appellant cannot be branded as a bonafide purchaser as he had failed to lead any evidence in this regard.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no merit and force in the submission of Mr.Gupta, for, even if the agreement to sell envisages the payment of compensation, i.e., double the amount, it would not preclude the

vendee to seek specific performance in view of the law laid down by the Hon'ble Supreme Court in **P D souza Versus Shondrilo Naidu, 2004 (6) SCC 649**. The agreement to sell has been proved, much less earnest money and extension. Once time was not the essence of the agreement to sell, the vendors had become greedy and did not disclose the factum of obtaining the permission from the Court and in a hurried manner, i.e., in ten days sold the land to appellant-defendant No.9. In my view, the judgments and decrees of the Courts below are based upon preponderance of evidence.

I am of the view that the appellant ought not to have been thrown out in the manner and mode, indicated above. At the best, he should have availed the remedy against the vendors, for, the defendant-vendors have also not been disclosed the agreement to sell dated 24.8.2000. The appellant shall be at liberty to seek vindication of his grievance in accordance with law.

For the foregoing reasons, while affirming the findings of the Courts below with the aforementioned observations, appeal stands dismissed.

November 15, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No