

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

RSA No.4000 of 2012 (O&M)

Date of decision : 26.08.2016

Tej Pal

...Appellant

Versus

Raj Kumar and another

...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. N.C. Kinra, Advocate and
Mr. Harsh Kinra, Advocate for the appellant.

Mr. S.K. Hooda, Advocate for respondent No.2.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the findings, whereby in suit for specific performance of agreement to sell dated 19.06.2007 in respect of suit property instead of granting discretionary relief under Section 20 of the Specific Relief Act, had been held entitled to the double amount i.e. the refund of the earnest money i.e. ₹4,00,000/- against the payment of ₹2,00,000/-.

Mr. N.C. Kinra, learned counsel appearing on behalf of appellant-plaintiff submits that both the Courts below have abdicated and

not appreciated the correct provision of law, much less, settled law. He submits that as per Section 23 of the 1963 Act, even if agreement to sell does not contain the clause of seeking specific performance of agreement to sell, same can always be granted. In support of his contention, he has relied upon judgment rendered by Hon'ble Supreme Court in *P.D'Souza Vs. Shondrilo Naidu*, 2004 (6) SCC 649, by holding that earlier judgment rendered by the Hon'ble Supreme Court in *Dadarao Vs. Ramrao*, 1999(8) SCC 416, has been held to be per-incuriam. He submits that readiness and willingness has been proved to the hilt, as target date for execution and registration of the sale deed was 18.06.2008 and once defendant had breached the terms and conditions of the agreement to sell by selling the property vide sale deed dated 25.07.2007 Ex.P1, suit was filed on 20.10.2007 and thus there is gross illegality and perversity. Defendant No.2/Subsequent Vendee cannot take the aid of Section 41 of the Transfer of Property Act, for, he had knowledge of the existence of the agreement to sell in view of the averments made in para No.4 of the written statement and thus urges this Court for framing of following substantial questions of law:-

1. Whether the agreement to sell in the absence of the Clause of seeking specific performance of agreement to sell, plaintiff, as per the provision of Section 23 of 1963 Act, can be prevented from seeking specific performance of agreement to sell?
2. Whether judgment and decree of both the Courts below suffers from illegality and perversity?

Mr. S.K. Hooda, learned counsel appearing on behalf of defendant No.2/subsequent vendee submits that his client is bona fide

purchaser for valuable consideration as he had no knowledge about the existence of the agreement to sell. After making reasonable inquiry from the revenue record, it was found that Raj Kumar-defendant No.1 sold the property for a sum of ₹1,41,000/- since third party rights have been created, therefore, urges this Court for affirmation of the findings under challenge.

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

It would be apt to reproduce paragraph No.6 of the written statement filed by defendant No.1 which reads thus:-

“6. That the contents of para no.6 of the plaint are correct and admitted except the allegation of collusion between the answering defendant and defendant no.2 and malafide intention in this regard. Neither the answering defendant was ever in collusion with defendant no.2 nor he had any malafide intention of defeating the said valuable rights of plaintiff. The answering defendant had to execute and get the sale deed registered due to immediate threat of his life as submitted above. It is correct that defendant no.2 had knowledge of above said agreement to sell dated 19.6.2007 much prior to the execution and registration of sale deed in his favour.”

On going through the aforementioned averments, it is clear that defendant No.1 had the knowledge of the existence of the agreement to sell yet purchased the property and this fact cannot be denied as against the total sale consideration of ₹3,00,000/-, defendant No.1 has purchased the property for paltry amount of ₹1,00,000/-.

I am not in agreement with the findings rendered by Courts below with regard to the liquidated damages as per the provision of Section

23 in view of ratio decidendi culled out in P.D' Souza's case (Supra) yet the Court had interpreted the aforementioned provisions by holding that earlier judgment rendered by the Hon'ble Supreme Court in *Dadarao Vs. Ramrao*, 1999(8) SCC 416, has been held to be per incuriam, for, such type of agreement to sell contain inherent relief of specific performance. The plaintiff in my view from the evidence brought on record has proved the execution of agreement to sell, much less, payment of earnest money through the attesting witnesses.

Judgment and decree of the Courts below are set aside.

Substantial questions of law as noticed above are answered in favour of appellant-plaintiff and against the respondents-defendants. Suit is decreed.

The appellant-plaintiff is directed to deposit the balance sale consideration within a period of two months from the date of receipt of certified copy of the order, therefore, the defendant No.1 or his LRs are directed to execute and register the sale deed failing which the plaintiff shall be entitled to seek the aforementioned direction in accordance with law.

Present appeal is allowed, accordingly.

26.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- Yes

Whether reportable:- No