

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

RSA-4197-2013 (O&M)

Date of decision: 08.02.2016

Purshotam Bansal

...Appellant(s)

Versus

Sunil Singh and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Ashish Gupta, Advocate for the appellant(s).

JITENDRA CHAUHAN, J.

The instant regular second appeal has been preferred against the judgment and decree dated 14.10.2010, passed by the learned Civil Judge (Junior Division), Karnal (for short, 'the trial Court'), whereby, the suit of the plaintiff-appellant has been partly decreed; and judgment and decree dated 05.07.2013, passed by the learned Additional District Judge, Karnal (for short, the first Appellate Court), whereby, the appeal preferred by appellant-plaintiff against the impugned judgment and decree dated 14.10.2010, of the trial Court, has been dismissed.

The plaintiff filed suit for specific performance with

consequential relief of permanent injunction and possession over the suit property. The learned trial Court, vide impugned judgment dated 14.10.2010, dismissed the suit qua specific performance of the agreement to sell, Ex.P1, however, held the plaintiff/appellant entitled to the refund of Rs.1.00 lac along with interest.

The learned first Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record and dismissed the appeal of the plaintiff vide impugned judgment and order dated 05.07.2013.

Hence, this appeal at the behest of the plaintiff.

Learned counsel for the appellant submits that the suit for specific performance with consequential relief of permanent injunction and possession was dismissed by the learned Courts below primarily on three grounds viz. (i) the plaintiff-appellant failed to perform his part of the agreement; (ii) respondent No.4 was a bona fide purchaser; and (iii) the plaintiff-appellant as well had filed similar suits. In response to the first point, it is submitted that respondent Nos.1 and 2 executed the agreement to sell, Ex.P1 and received an amount of Rs.1.00 lac. The execution of the sale was left open to the will of the plaintiff-appellant. The agreement to sell was executed on 30.06.2003 and the respondents were

called upon to execute the sale in the month of July, 2005, which could not materialize on account of the inaction of the respondent-defendants. It is further contended that if defendant No.4 had been a bona fide purchaser of the house in question, he would have examined defendant No.3 to prove this fact. Lastly, it is contended that without there being any cogent evidence on record to show that the plaintiff-appellant is a habitual litigant and has filed several other similar suits, no adverse inference could have been drawn against him.

I have heard learned counsel for the appellant and gone through the case file.

From the perusal of evidence on record, it is made out that the plaintiff-appellant did not serve any legal notice upon the respondent-defendants directing them to appear before the Registrar on a specified date. It has also come on record that the appellant-plaintiff is a property dealer and had filed a large number of such cases against several other persons. It is not explained that in case, the appellant/plaintiff was ready and willing to execute the sale deed, what stopped him from not serving a legal notice upon the respondent-defendants. There is absolutely no evidence on record that the appellant-plaintiff took any steps to execute the agreement to sell reached between the parties. Considering the

evidence on record that the plaintiff is a property dealer, it appears that perhaps he could not find a suitable purchaser to purchase the property directly from the defendants.

So far as the argument that the Courts below wrongly held that respondent-defendant No.4 was a bona fide purchaser, it is to be seen that the plaintiff-appellant failed to prove on record the agreement to sell reached between the plaintiff and defendant Nos.1 and 2 was in the knowledge of defendant No.4, nor there is any evidence to the effect that any notice was served by the plaintiff to the general public. The title of the property was clear as on the date of purchase by defendant No.4. Therefore, both the Courts below rightly held that defendant no.4 is a bona fide purchase.

In his cross-examination, the plaintiff has admitted that apart from the agreement in question, he has entered into several other similar agreements to sell. He has also admitted that he has two residential houses and has filed some other cases also for specific performance of agreements to sell. Thus, the inference drawn by the learned Courts below to the effect that the plaintiff is in the business of property and he has no intention to actually use the house in question for residential purpose.

In view of the above discussion, this Court feels that the

findings of facts recorded by the learned Courts below are based on correct appreciation of the evidence on record, which does not call for any interference by this Court. No question of law, much less a substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

08.02.2016

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(JITENDRA CHAUHAN)
JUDGE