

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

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RSA 244 of 2016 (O&M)
Date of decision: 27.01.2016

Ranjodh Singh and another

..... Appellants

Versus

Varinder Pal Singh and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. M S Viridi, Advocate
for the appellants

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

Rekha Mittal, J.

The present regular second appeal has been directed against the judgment and decree dated 17.10.2015 passed by the Additional District Judge, Hoshiarpur whereby the appeal filed by the appellants was dismissed and judgment and decree passed by the trial Court dated 19.04.2012 has been affirmed.

Facts relevant for disposal of the instant appeal are that Varinder Pal Singh - respondent No.1 filed a suit for confirmation of possession or in the alternative for joint possession by way of specific performance of an agreement dated 10.08.2006 while challenging sale deed dated 15.09.2006 being a sham transaction. As per allegations raised in the plaint, Parshotam Singh-respondent No. 3 and Ramesh Kumar his brother

gave general power of attorney dated 01.12.2005 in favour of Chano Devi-respondent No. 2 (their mother). Balram Singh, Narotam Singh, Rakesh Kumar, Rajesh Kumar sons, Kamlesh Kumari and Kanta Devi daughters of Baboo Ram also gave general power of attorney to respondent No. 2 on 07.11.2005. Chano Devi-respondent No. 2 for herself and on behalf of Parshotam Singh, Ramesh Kumar, Balram Singh, Narotam Singh, Rakesh Kumar, Rajesh Kumar, Kamlesh Kumari and Kanta Devi executed an agreement to sell dated 10.08.2006 in respect of land measuring 63 kanals 18 marlas for total sale consideration of Rs.8,50,000.00 and received Rs.4,00,000.00 towards earnest money. The date for execution of the sale deed was settled as 30.10.2006. Respondent No. 2 delivered possession of entire land to respondent No. 1 on the date of execution of agreement. The appellants (defendants No. 3 and 4 therein) had prior knowledge of the agreement of suit land in favour of respondent No. 1 but still got executed sale deed from respondent No. 3 on 15.09.2006. Respondent No. 2 (Chano Devi) executed sale deed of land measuring 49 kanals 16 marlas as attorney of her sons and daughters on 22.11.2006. The sale deed of suit land could not be executed by respondent No. 3 as respondent No. 1 had a prior right to purchase suit land. Any sale deed executed by respondent No. 3 in favour of the appellants is no sale in the eyes of law and is a void transaction. Respondent No. 1 always remained ready and willing to perform his part of the contract.

Respondent No. 2 did not contest the suit and was proceeded against ex parte. Respondent No. 3 filed the written statement averring that he never authorized respondent No. 2 to sell the suit land nor received any earnest money. He has already sold the land to the appellants and prayed

for dismissal of the suit.

The appellants filed the written statement challenging maintainability of the suit; respondent No. 1 having no cause of action to file the suit and suit being not properly valued for the purpose of Court fee. On merits, it has been denied that respondent No. 1 is in possession of the suit property with the averments that they have become owners in possession of land measuring 14 kanals 2 marlas on the basis of sale deed dated 15.09.2006 executed by respondent No. 3. They are bona fide purchasers without notice and for consideration of land. They had no knowledge of the alleged agreement to sell and prayed for dismissal of the suit with costs.

The learned trial Court, on due consideration of the pleadings of the parties, issues framed for determination, evidence adduced on record and submissions made by their respective counsel, negated plea of the appellants that they are bona fide purchasers of the suit land vide sale deed dated 15.09.2006 executed by Parshotam Singh respondent No. 3, in view of the fact that agreement to sell dated 10.08.2006 propounded by respondent No. 1 executed by respondent No.2 for herself and on behalf of her sons and daughters on the basis of power of attorney including Parshotam Singh respondent No. 3 has been duly proved and on the basis of said agreement, respondent No. 2 has already executed sale deed in respect of the land agreed to be sold except land in dispute on 22.11.2006. The findings recorded by the learned trial Court were affirmed in appeal by the Additional District Judge, Hoshiarpur.

Counsel for the appellants (subsequent purchasers) would submit that the Courts below failed to appreciate correctly that the

appellants are bona fide purchasers, for consideration and without notice of the agreement to sell dated 10.08.2006. To bring home his contention, it is argued that respondent No. 1 failed to adduce satisfactory much less cogent and convincing evidence to establish his plea that possession of land subject matter of the agreement of sale dated 10.08.2006 was delivered to him. It is further argued that the appellants consulted revenue records and after verifying ownership of respondent No. 3 got sale deed executed in their favour on payment of sale consideration mentioned in the sale deed proved on record, thus, the findings recorded by the trial Court and affirmed in appeal holding against the appellants that they have failed to successfully proved their plea of bona fide purchasers are erroneous and liable to be set aside.

I have heard counsel for the appellants, perused the records and find no merit in the appeal.

The findings of the Courts below in regard to execution of agreement to sell dated 10.08.2006 by Chano Devi respondent No. 2 for herself and on behalf of her sons and daughters including respondent No. 3 have attained finality as respondent No. 3 has not challenged those findings. The appellants being the subsequent purchasers and were not competent to challenge the agreement of sale particularly in the circumstances that there is no plea raised by them that the agreement dated 10.08.2006 is the result of collusion between respondents No. 1 and 2 in order to defeat rights of the appellants on the basis of sale deed dated 15.09.2006.

This brings the Court to plea of the appellant that they are purchasers in good faith, for consideration and without notice of the agreement of sale dated 10.08.2006. In the written statement filed by the

appellants, no particulars of their plea of being bona fide purchasers have been pleaded. The learned trial Court has noticed that one of the appellants Ranjodh Singh appeared in the witness box to prove their plea of bona fide purchasers under Section 41 of the Transfer of Property Act, 1872, but nothing has been proved as to what inquiry they conducted and what was the nature of inquiry they made before purchasing the land in question. Counsel for the appellants has not disputed that the appellants are owners in possession of land adjoining to the suit land. It is also an admitted fact that Balbir Singh (DW2) examined by the appellants is also owner in possession of land adjoining to the suit land. The land in question is situated in a village. It is highly difficult to believe that a person who was owner of the adjoining land of the suit property did not know about transaction of sale of said property by its vendor either himself or through his attorney. There is nothing on record suggestive of the fact that the appellants made any inquiry from Parshotam Singh if he had ever executed any power of attorney in regard to the suit land and further whether said power of attorney has used the power on his behalf to alienate the suit land. The mere fact that Ranjodh Singh has deposed that the appellants did not have the notice of the agreement of sale is not sufficient to establish their plea of bona fide purchasers or purchasers in good faith. This Court in ***Amrik Singh v Surjit Kaur, 2008(2) R.C.R.(Civil) 465*** has held that mere denial of the earlier agreement would not discharge the onus cast upon the subsequent purchaser to avoid the effect of the same. It is incumbent upon the purchaser to inquire about possession of the suit property and other inquiry with regard to ownership of the suit property which would have been done by a man of reasonable prudence. In the case at hand, the appellants have failed to prove

their plea of purchasers in good faith and thus their claim has been rightly rejected by the Courts below.

No other point has been raised.

In view of the above, neither any substantial question of law arises for adjudication nor any error much less illegality can be found in the consistent findings recorded by the Courts below.

For the foregoing reasons, finding no merit, the appeal is dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

27.01.2016
mohan bimbura