

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

**RSA No.1249 of 2015 (O&M)  
Date of decision:19.08.2016**

Usha Malhotra

... Appellant

Vs.

Rajender Singh and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. H.S.Sirohi, Advocate  
for the appellant.

Mr. A.S.Syan, Advocate  
for the respondent-caveator (s).

**AMIT RAWAL J. (Oral)**

Appellant-subsequent vendor/defendant, who alleged to have purchased the property in dispute, vide sale deed dated 09.03.2010 is aggrieved of the concurrent findings of facts and law, whereby, suit of the respondent-plaintiff seeking specific performance of the agreement to sell dated 13.08.2002, has been decreed.

Mr.H.S.Sirohi, learned counsel appearing on behalf of the appellant submits that the appellant is a bonafide purchaser for a valuable consideration without notice of the aforementioned litigation. The vendor is the third vendee as the property has exchanged between two subsequent vendees. In the aforementioned case, defendant No.1 had entered into agreement to sell the property in dispute for a total valuable consideration of ₹4,60,000/-. As per the pleadings in the plaint, a sum of ₹2,00,000/- as

earnest money was paid and the target date for execution and registration of the sale deed was 05.08.2003. On the said date, another amount was paid to vendor and the date was extended to 27.08.2003. He further submits that the trial Court passed the judgment and decree on 17.11.2008 and the appeal at the instance of the bonafide purchaser was instituted in the year 2014, whereas, the appellant after passing of the judgment and decree, is the third purchaser. Rajinder Singh alleged plaintiff/vendor had been indulging into such acts as he had been convicted in respect of forging of the agreements to sell, thus, having criminal background as all those judgments have been placed on record by way of additional evidence to show his conduct, much less, the background. The respondent-plaintiff had not been able to show the readiness and willingness throughout, much less, the adequate consideration on the alleged date, i.e., 27.08.2003. The trial Court has also gone into realm of surmises and conjectures by holding that the copy of FIR has not been produced on record which was cancelled, whereas, on the contrary, Ex.D4 shows that the plaintiff was convicted. All these factors were essential and necessary and should be pondered upon by the Lower Appellate Court for declining the discretionary relief and thus, urges this Court for setting aside the findings of the Courts below by allowing the application for additional evidence filed under Order 41 Rule 27 of Code of Civil Procedure and by formulating the substantial questions of law as culled out in the memorandum of appeal.

In support of his aforementioned contentions, he relies upon the judgment of the Hon'ble Supreme Court in **Mrs Vijaya Shrivastava vs.**

**M/s Mirahul Enterprises and others 2006 (3) R.C.R.(Civil) 740.**

Mr. A.S.Syal, learned counsel appearing on behalf of the respondents submits that in the judgment dated 13.03.2014, whereby, the respondent-plaintiff was convicted under Sections 406, 420, 468 and 471 of Indian Penal Code has been acquitted in appeal by the Additional Sessions Judge, vide judgment dated 05.07.2011. As regards, the other cases, judgment at page 83 of the paper book, criminal appeal No.43 of 2009, the conviction is in respect of an offence under Sections 342, 353, 332 and 186, IPC which has nothing to do with offence under Sections 406, 420, 468, 471 IPC. Ex.D4 was also with regard to FIR under the same provisions of Act. In one of the cases, son of the respondent-plaintiff had been convicted. Whereas, on the contrary, readiness and willingness has been proved. The vendor did not dispel his signatures on the agreement to sell. No doubt, appellant/subsequent purchaser can take up the plea of readiness and willingness but the fact remains that he was also impleaded as defendant in the suit. On the basis of evidence on record, it has *ex facie* been proved on record that respondent-plaintiff had always been ready and willing to perform his part of contract. Even the payment of earnest money of ₹2,00,000/- and another amount of ₹1,00,000/- have been proved on record and thus, urges this Court for affirming the findings rendered by both the Courts below.

I have heard learned counsel for the parties and appraised the paper book and in agreement with the submissions of Mr. Syal. On going

through the judgments rendered by the Criminal Courts, are pertaining to the provisions of Sections 342, 353, 332 and 186 IPC and not with regard to 406, 420, 468 and 471 IPC. Whereas, in one of those cases, appellant had been acquitted by the Sessions Judge, vide judgment dated 05.07.2011.

Coming to the merits of the case, it is conceded position on record that appellant had purchased the property, vide sale deed dated 09.03.2010, after passing of the judgment and decree by the trial Court, in my view, cannot be said to be a bonafide purchaser and ought not to have claimed the damages against the respondent-plaintiff as they have been cheated at behest of the original vendor. As per the facts and evidence brought on record, in my view, the respondent-plaintiff has been able to prove the readiness and willingness on the target date 27.08.2003 and the suit has been filed on 04.09.2003. The major amount of total sale consideration had already been received by the vendor. It appears that vendors had been duping subsequent vendees by concealing the factum of pendency of litigation. Such an act, in my view, is highly deplorable. Whereas, the sale deed was executed in favour of the plaintiff on 01.07.2010 after the sale deed of the appellant through Court. I have gone through the judgment relied upon by Mr. Sirohi in Mrs. Vijaya Shrivastava's case (supra) and therefore, I am of the view that the Hon'ble Supreme Court did not ponder upon the question of bonafide purchaser and left it open, so the judgment does not apply to the present case.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below which based

upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)  
JUDGE

August 19, 2016  
savita

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |