

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

**R.S.A No.2792 of 2016 (O&M)
Date of decision :07.09.2016**

Karan Singh and others

..... Appellants

Versus

Rani Malik and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Ms. Nupur Chaudhary, Advocate
for the appellants.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 01.09.2015 passed by the learned Additional District Judge, Panipat, whereby the appeal filed by appellants (defendants no. 2 to 4 in the suit) against the judgment and decree dated 22.11.2012 passed by the learned Civil Judge (Sr. Division), Panipat, has been dismissed.

2. Respondents-plaintiffs has filed the suit for possession by way of specific performance of agreement to sell dated 02.05.2007. She also sought the decree for declaration that the sale deed executed by defendant no.1 in favour of appellants-defendants no. 2 to 4 dated 15.10.2007 is illegal, null and void. A decree for permanent injunction was also prayed for restraining the appellants from alienating the suit land or changing the nature thereof in any manner.

3. As per averments in the plaint, defendant no.1 agreed to sell the suit land measuring 14 Kanals 1 Marla situated in the revenue estate of village Risalu for a sale consideration of Rs. 12 lacs in lump sum vide agreement to sell dated 02.05.2007. At the time of execution of the agreement to sell defendant no.1 had agreed to get the land redeemed from the mortgage and thereafter to get the sale deed executed and registered on or before 05.10.2007. On 05.10.2007, plaintiff came present in the office of Sub Registrar, Panipat along with remaining sale consideration and other expenses. But, defendant no.1 did not turned up. When the plaintiff contacted him on 06.10.2007, he assured to get the sale deed executed on 08.10.2007. Plaintiff again remained present in the office of Sub Registrar, Panipat on 08.10.2007, but defendant no. 1 again did not turned up. Thereafter, she served the legal notice but of no avail. Plaintiff has always been ready and willing to perform her part of agreement. Hence the suit.

4. The suit was contested by defendant no.1-Om Parkash (since deceased) and defendants no. 2 to 4 by filing the separate written statements. Defendant no.1 denied the execution of the agreement to sell dated 02.05.2007. He alleged that the said agreement was forged document, which was procured by inducement and misrepresentation. He was not in possession of the suit land. He never agreed to sell the same. The land was mortgaged with Hawa Singh and Angrej Singh sons of Gaje Singh. It is further pleaded that agreement was got prepared by plaintiff in collusion with her husband. He further pleaded that he has visited the Tehsil premises for redemption of the mortgage along with husband of

the plaintiff and at that time his signatures were obtained by fraud and misrepresentation in order to grab his land. He further pleaded that he has sold the land in question vide registered sale deed dated 15.10.2007 to defendants no. 2 to 4, which is legal and valid.

5. Appellants-defendants no. 2 to 4 contested the suit on the plea that they are *bona fide* purchasers of the suit land for a valid sale consideration. They had no knowledge about the alleged agreement to sell dated 02.05.2007. The said agreement to sell is not binding upon them. They are owner and in cultivating possession of the suit land on the basis of the sale deed dated 15.10.2007 which has been rightly executed by defendant no. 1 in their favour. All other averments in the plaint were controverted.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether an agreement to sell dated 02.05.2007 was executed between plaintiff and defendant no.1 and defendant no.2 received Rs. Three lacs as earnest money?OPP
2. Whether the plaintiff is /was ready to perform his part of contract after paying remaining balance sale consideration.?OPP
3. Whether the sale deed dated 15.10.2007 executed by defendant no.1 in favour of defendants no. 2 to 4 is illegal, null and void and not binding on the rights of the plaintiff?OPP
4. In case issue nos. 1 to 3 above referred, are proved in affirmative, then whether the plaintiff is entitled to the relief of permanent injunction on the ground as alleged in the plaint? OPP
5. Whether the suit is not maintainable in the present form?OPD
6. Whether the plaintiff has not come to the Court with clean hands?OPD
7. Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD
8. Relief.

7. On appreciating the evidence on record and the contentions raised by the learned counsel for the parties, the learned trial Court decreed the suit filed by the plaintiff-respondent vide impugned judgment

and decree dated 22.11.2012.

8. Aggrieved with the said judgment and decree, appellants-defendants preferred the appeal. The same has also been dismissed by the learned First Appellate Court, Panipat. Hence this Regular Second Appeal.

9. I have heard Ms. Nupur Chaudhary, Advocate, learned counsel for the appellants and have carefully gone through the record of the case.

10. Initiating the arguments, learned counsel for the appellants contended that defendant no.1-Om Parkash (since deceased) has never executed the agreement to sell dated 02.05.2007 in favour of plaintiff. She contended that the said agreement is a forged and fabricated document which was procured by the plaintiff in collusion with her husband by inducement and misrepresentation of facts. She contended that in-fact defendant no.1 has visited the Tehsil Office in connection with redemption of his land. At that time, his signatures were obtained by the husband of plaintiff. Thus, she contended that no valid agreement to sell was ever executed by defendant no.1-Om Parkash (since deceased) in favour of plaintiff.

11. She further contended that appellants are *bona fide* purchaser of the suit property. They had no knowledge about the agreement to sell dated 02.05.2007. They have purchased the suit property for valuable consideration and they are in cultivating possession of the suit property as owner. She contended that the sale deed dated 15.10.2007 is a registered document and has been validly executed by defendant no.1 in favour of

the appellants. Thus, she contended that learned Courts below have wrongly decreed the suit and set aside the sale deed dated 02.05.2007 executed by defendant no.1 in favour of appellants.

12. I have duly considered the aforesaid contentions.

13. The present appellants were not the party to the agreement to sell dated 02.05.2007. So, the plea of fraud, undue influence and misrepresentation are not available to appellants. This plea was only available to defendant no.1-Om Parkash, the executant of the agreement. But, he has expired during the pendency of the suit and could not appear in the witness box to support the pleas raised by him in the written statement.

14. Even otherwise, plaintiffs-respondent has led the sufficient evidence to prove the execution of the agreement to sell dated 02.5.2007 by defendant no.1 in her favour. She herself stepped into the witness box as PW-1 and deposed about the execution of the agreement to sell dated 02.05.2007 by defendant no.1 in her favour. She also deposed that sum of Rs. 3 lacs were paid as earnest money and defendant no.1 had agreed to get executed and registered the sale deed on 05.10.2007 on receipt of balance sale price of 9 lacs. Plaintiff-respondent has further examined PW-2-Ashok Kumar and PW-3-Rajesh, the attesting witnesses of the agreement. They have consistently deposed that defendant no.1 has duly executed and signed the agreement dated 02.05.2007 in their presence after reading and understanding the contents thereof. He has also received the earnest money of Rs. 3 lacs in cash in their presence. All these witnesses were examined at length, but nothing substantial could be

brought on record to shatter their testimonies. Plaintiff has also examined PW-5 Inder Singh Gautam, the scribe of the agreement, who has also supported the case of the plaintiff.

15. Even as per the averments in the written statement filed by defendant no.1, he has admitted his signatures on the agreement. The plea taken by him in the written statement that his signatures were obtained by the husband of plaintiff by undue influence and misrepresentation of the facts is not supported from any cogent evidence.

16. Appellants-defendants have not placed on record any material to show that any proceedings were pending on the date of agreement in the Tehsil Office, with respect to the redemption of the mortgage of his land. Rather, copy of the order Ex.P-1 passed by the Collector, Panipat shows that application for redemption of the land was moved by defendant no.1 on 11.05.2007 and order on the application was passed on 11.07.2007. So, even the application for redemption of land was filed after 9 days of the execution of the agreement. Moreover, in the written statement filed by defendant no.1, he has not mentioned on which date he came to the Tehsil premises when his signatures were obtained by the husband of plaintiff. So, the plea raised by defendant no.1 in the written statement is itself vague and is not supported from any cogent and reliable evidence.

17. So, the valid execution of the agreement to sell dated 02.05.2007 by deceased-defendant no.1-Om Parkash in favour of the plaintiff is established.

18. The evidence brought on record further established that

plaintiff was ready and willing to perform her part of contract. She has categorically deposed that on 05.10.2007, the date fixed for execution and registration of the sale deed, she came present in the Office of Sub Registrar, Panipat along with the balance sale consideration. But, defendant no.1 did not turned up. When she contacted him, he assured that the sale deed would be executed and registered on 08.10.2007. Plaintiff deposed that even on that date she remained present in the office of Sub Registrar, Panipat, but defendant no.1 did not turned up and despite the issuance of the legal notice defendant no.1 did not execute the sale deed. Rather, he has executed the sale deed dated 15.10.2007 in favour of the appellants. It shows that plaintiff has always been ready and willing to perform her part of contract. Whereas, defendant no.1 has breached the terms and conditions of the agreement.

19. Appellants-defendants have raised the plea that they are the *bona fide* purchasers of the land in dispute. They had no knowledge about the agreement dated 02.05.2007 in favour of the plaintiff executed by defendant no.1. As per Section 41 of the Transfer of Property Act, 1882 (for short T.P. Act), the essential ingredients to prove the *bona fide* purchaser are as under:-

1. The transferor is the ostensible owner;
2. He is so by the consent, express or implied, of the real owner;
3. The transfer is for consideration;
4. The tansferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer.

20. Thus, in order to succeed, appellants-defendants were required to establish that they had acted in good faith taking reasonable

care to ascertain that defendant no.1 had power to transfer the suit land in addition to the other ingredients of Section 41 of the T.P. Act. Reference can be made to case **Smt. Niranjana Kaur and others Vs. The Financial Commissioner, Revenue & Secretary to Government, Punjab and others 2010(4) R.C.R (Civil) 610**. The same ratio of law has been laid down by the Hon'ble Apex Court in case **Hardev Singh Vs. Gurmail Singh (Dead) by LRs. 2007(1) R.C.R (Civil) 877**.

21. In the written statement filed by appellants-defendants, they have taken the plea that they are *bona fide* purchaser of the suit land with a valid consideration of Rs. 18,34,000/- and they had no knowledge about the alleged agreement to sell dated 02.05.2007. As such, the said agreement is not binding upon their rights. Appellants-defendants have not pleaded anywhere in the written statement that they had acted in good faith taking reasonable care to ascertain that the transferor (defendant no.1) had power to transfer the suit land. They have also not mentioned that they carried out any reasonable inquiry about the competency of defendant no.1 to sell the suit land.

22. Even, in the affidavit of DW-1 Jasbir Singh (appellant no.3), these ingredients of Section 41 of the T.P. Act are totally missing. Only appellant no.3 Jasbir Singh has stepped into the witness box as DW-1 in order to establish the plea of *bona fide* purchaser raised by appellants. As already mentioned, he has nowhere deposed in his affidavit that they had acted in good faith taking reasonable care to ascertain that defendant no.1 had power to transfer the suit land. He further admitted in the cross-examination that defendant-Om Parkash was not asked about any other

agreement to sell and Om Parkash also did not inform them. He further deposed that he and plaintiff are on visiting terms as plaintiff and all the defendants are of the same locality. He further admitted that they had directly settled the bargain with Om Parkash. He knew Om Parkash since when he was only 10-12 years of age. They are having adjoining fields. They are on visiting terms in marriages etc. The house of Om Parkash is only 1 ½ minutes walk from their house. These admissions on the part of DW-1- Jasbir Singh show that appellants were field neighbours of Om Parkash as their land is situated near to the land of Om Parkash. Their house were also near to each other. They were having long standing relations and used to attend the social functions of each other. In these circumstances, the plea raised by appellants that they had no knowledge about the agreement to sell dated 02.05.2007 executed by defendant no.1 in favour of plaintiffs is not believable. In case **Gurcharan Singh and others Vs. Surjit Kaur and others 2005(3) R.C.R (Civil) 628**, this Court has laid down that a person residing in the same village is presumed to have knowledge of entitlement of the heirs and co-sharers in the land irrespective of the revenue entries. Again in case **Amrik Singh Vs. Smt. Surjit Kaur and others 2008(2) R.C.R (Civil) 465**, this Court has laid down that a person having his own agriculture land adjoining the land in question, visiting the place frequently cannot be ignorant and is presumed to have knowledge of transactions qua the adjoining land. Both these cases are squarely applicable to the facts of the case. Thus, the plea raised by defendants no. 2 to 4 that they had no knowledge about the agreement to sell dated 02.05.2007 executed by defendant no.1 in favour

of plaintiffs cannot be accepted. Appellants-defendants have also failed to establish that they had acted in good faith taking reasonable care to ascertain that defendant no.1 had power to transfer the suit land. So, they are not proved to be the *bona fide* purchaser of the land in dispute.

23. The learned Courts below have rightly held that the execution of the agreement to sell was duly proved and plaintiff was ready and willing to perform her part of contract. Appellants have failed to establish their plea of *bona fide* purchaser, so certainly plaintiffs-respondents was entitled for the relief of specific performance and the sale deed dated 15.10.2007 executed by defendant no.1 in favour of appellants will not be binding on the rights of the plaintiffs.

24. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

25. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

26. Therefore, the present appeal being devoid of merits, is hereby dismissed with costs.

September 07, 2016

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**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No