

RSA No. 481 of 2015(O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 481 of 2015(O&M)
Date of decision : May 28, 2016

Tara Singh and others

..... Appellants

Versus

Man Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Sanjiv Gupta, Advocate
for the appellants.**

**Mr. R. S. Mamli, Advocate
for the respondents.**

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

Amit Rawal, J (oral).

The appellants-defendants Nos. 2 to 5 are in Regular Second Appeal against the concurrent finding of fact and law whereby suit for possession by way of specific performance of agreement to sell dated 23.6.2001 in respect of land measuring 55 Kanals 12 Marlas has been decreed.

The contention raised on behalf of the appellants is that they are bona fide purchasers for a valuable consideration vide registered sale deed dated 11.4.2002 preceded by an agreement dated 3.10.2001 @ 70,000/- per acre against the price agreed to be sold to the plaintiff @

₹52,000/- per acre. Before entering into an agreement to sell the revenue record was checked and found that, it was free from all encumbrances. Infact the defendant No.1 had deceived and mislead regarding existence of agreement to sell in question. There is recital in the plaint that the possession was also handed over but failed to prove the same. Agreement to sell also contains the clause of compensation of double the amount, as a sum of ₹1,50,000/- against the total sale consideration of ₹3,61,400/- had been paid as earnest money. Even the defendants were not given chance to offer them for cross-examination. The Court should not assume role of expert in view of the testimony of two experts one at the instance of the plaintiff and other at the instance of the defendant to form an opinion that the agreement to sell bear signatures of defendant No.1, thus urges this Court for formulating substantial questions of law as drawn in the Grounds of Appeal as there is illegality and perversity in the judgments and decrees under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that it is a conceded position on record that Shakuntla did not step into the witness box. The appellants though appeared in the examination-in-chief but did not offer themselves for cross-examination. Shakuntla's husband appeared as special Power of Attorney. Agent would not know with regard to act and conduct done by the principal, particularly of agreement to sell which is purported to have been signed by Shakuntla. This view of mine is fortified by the judgment rendered by Hon'ble the Supreme Court of India in **Mann Kaur (dead) by L.Rs Vs. Hartar Singh Sangha 2011 (1) RCR Civil 189** Even the agreement to sell contains the element of damages/compensation in terms of

money yet the party cannot be given a right of specific performance in view of the law laid down by Hon'ble Supreme Court in **P.D'Souza Vs. Shondrilo Naidu (2004) 6 SCC 649.** The respondents-plaintiffs have, admittedly to put question to the vendor with regard to her signatures on the agreement to sell, thus, examination of the expert at the instance of the defendant pales into insignificance. As noticed above, the vendor had become greedy and sold the property at a higher rate. All these facts show that defendant No.1 is a greedy person. It cannot be believed that she did not disclose the first agreement to sell to defendant. At the best, appellants-defendant Nos. 2 to 5 are entitled to seek damages against defendant No.1 in terms of money.

For the foregoing reasons, I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

May 28 , 2016
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