

In the High Court of Punjab and Haryana at Chandigarh

R.S.A. No. 4836 of 2015 (O&M)
Date of Decision: January 11, 2016

Dharam Chand and another

... Appellants

Versus

Harbans Lal and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

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

Present: Mr. C.M. Munjal, Advocate,
for the appellants.

Paramjeet Singh Dhaliwal, J.

This regular second appeal has been preferred by the appellants-defendants against the judgment and decree dated 07.01.2013 passed by learned Additional Civil Judge (Senior Division), Jalandhar (West) whereby suit filed by respondent No.1/plaintiff for possession by way of specific performance, declaration and permanent injunction has been decreed, as well as, against the judgment and decree dated 28.04.2015 passed by learned Additional District Judge, Fazilka, whereby two separate appeals preferred by the appellants/defendants and respondent no.2/defendant have been dismissed by a common judgment.

For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments of

the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiff filed a suit for possession by way of specific performance, declaration and permanent injunction against the defendants on the ground that defendant no.1 – Jammu Singh was owner in possession of suit land measuring 4 kanals, as detailed in the headnote of the plaint. Vide agreement to sell dated 02.01.2007, defendant no.1 agreed to sell the suit land in favour of the plaintiff-Harbans Lal at the rate of Rs. 2 lacs per acre and also received Rs.80,000/- as earnest money in the presence of marginal witnesses and the date for execution and registration of sale deed was fixed as on or before 01.01.2008. On 01.01.2008, the plaintiff along with balance sale consideration and other expenses for registration visited the office of Sub Registrar, Jalalabad, but defendant no.1 did not turn up. Ultimately, the plaintiff got his presence marked by getting an affidavit attested from the Executive Magistrate, Jalalabad. After the stipulated period, defendant no.1 disclosed to the plaintiff that he has already sold the suit land in favour of defendants no.2 and 3 vide registered sale deed dated 09.04.2007. Thereafter, plaintiff served a legal notice upon the defendants calling upon to them to get the sale deed executed in terms of the agreement to sell in his favour, but to no effect. Hence, suit was filed.

Upon notice, defendant no.1 filed written statement taking plea that there existed one land in the name of his children and plaintiff made arrangement for sale of the said land. Therefore, plaintiff obtained thumb impression of defendant No.1 on some blank stamp papers. To grab the suit land, plaintiff converted the said blank stamp paper into the agreement of sale. In separate written statement filed by defendants no.2 and 3 took plea

that they are bonafide purchasers of the suit property for valuable consideration without notice of the prior agreement to sell in favour of the plaintiff.

On the basis of the pleadings of the parties, the Court of first instance framed the following issues:-

- “1. Whether the defendant no.1 executed an agreement to sell dated 02.01.2007 in favour of the plaintiff and received Rs.80,000/- as earnest money? OPP*
- 2. Whether the plaintiff is entitled to recover Rs.1,00,000/- as alternative relief with interest thereon? OPP*
- 3. Whether the plaintiff has been ready and willing to perform his part of the contract? OPP*
- 4. Whether the defendants no. 2 and 3 are the bona fide purchasers of the suit property for valuable consideration without notice of the prior agreement to sell in favour of the plaintiff? OPD*
- 5. Whether the sale deed dated 09.04.2007 executed by the defendant no.1 in favour of the defendants no. 2-3, is illegal, null and void? OPP*
- 6. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- 7. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD*
- 8. Whether this suit is not maintainable? OPD*
- 9. Relief.”*

The Court of first instance, after perusal of the evidence led by the parties, decreed the suit vide judgment and decree dated 07.01.2013. Against that, defendants preferred two separate appeals, which have been dismissed by the lower appellate Court by a common judgment vide judgment and decree dated 28.04.2015. Hence, this second appeal preferred by defendants no.2 and 3/appellants.

I have heard learned counsel for the appellants.

Learned counsel for the appellants has submitted that the following substantial questions of law formulated in para no. 11 of grounds of appeal, arise for consideration in this second appeal:-

- “i) Whether the Courts below have misread and misdirected the oral and documentary evidence as well as pleadings of the parties placed on record?*
- ii) Whether the plaintiff has proved the execution of the agreement by producing cogent evidence?*
- iii) Whether on the basis of evidence produced by the plaintiff, the Courts below were within their jurisdiction to pass a decree of specific performance?*

Learned counsel for the appellants vehemently contended that the findings recorded by both the Courts below are against law and not sustainable in the eyes of law. The plaintiffs are bonafide purchasers and have purchased the property in dispute for consideration. Learned counsel further contended that the appellants had no notice of the alleged agreement.

I have considered the contentions raised by learned counsel for the appellants and perused the record.

The finding with regard to the bonafide purchasers is a finding of fact. Both the Courts below have recorded these findings after appreciating the evidence on record. The agreement to sell was executed on 02.01.2007. The sale deed was to be executed on or before 01.01.2008, but the sale deed in favour of the appellants was executed on 09.04.2007 with undue haste. In small villages, everybody knows that there is agreement between the parties. Otherwise also, the said finding cannot be re-appreciated in the second appeal.

Concurrent findings of fact have been recorded by both the

Courts below. Learned counsel for the appellants could not show that the said findings are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. It is a settled law that this Court cannot interfere in the findings of fact recorded by the Courts below on appreciation of evidence brought on record, unless the findings are perverse. Consequently, said findings of fact do not warrant interference in second appeal. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.

January 11, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge