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

RSA-4273-2014 (O&M)

Date of decision : 08.04.2016

Labh Singh

...Appellant

Versus

Pargat Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Anupam Sharma, Advocate
for the appellant.

Mr. J.S. Brar, Advocate
for respondent No.1.

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 appellant-defendant No.2 is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit claiming specific performance of agreement to sell dated 19.09.2008 has been decreed in toto, in essence, the judgment and decree of the trial Court has been modified which held respondent No.1-plaintiff to be entitled for refund earnest money of ₹ 2,00,000/- along with interest @ 6%.

Ms. Anupam Sharma, learned counsel appearing on behalf of the appellant-defendant submits that the trial Court failed to frame the issue with regard to the readiness and willingness. In the absence of framing of the issue,

the discretionary relief under Section 20 of the Specific Relief Act, 1963 (hereinafter called 'the 1963 Act') could not have been granted. The appellant-defendant is the *bona fide* purchasers for a valuable consideration as he has purchased the property on 17.06.2009, whereas the suit was filed on 23.07.2009, therefore, *doctrine of lis pendens* would not apply. Before purchasing the property, the revenue record was rectified and there was no reflection of agreement to sell dated 19.09.2008 or any encumbrance. All these facts have been noticed by the trial Court and accordingly, decreed the suit, but the lower Appellate Court has committed illegality and perversity in decreeing the suit holding that once the respondent(s)-plaintiff(s) has proved the agreement to sell, the discretion has to be exercised. There was an apparent collusion between the plaintiff and defendant No.1. The agreement to sell was not registered, much less, respondent(s)-plaintiff(s) failed to prove possession and urges this Court to formulate the substantial question of law as culled out in the memorandum of appeal.

Mr. J.S. Brar, learned counsel appearing on behalf of the respondent No.1-plaintiff submits that respondent No.2-Kashmir Singh-vendor admitted that he had informed the the defendant Jasvinder Kaur and her husband, regarding agreement to sell, this fact is sufficient to demolish the plea of the *bona fide* purchaser. The sale deed set up by the appellant-defendant is of a lesser value as agreed to be sold to plaintiff. One of the attesting witnesses, Jarnail Singh, has been examined, who deposed in terms of averments made in the plaint regarding the execution of the sale deed. Defendant No.1-Kashmir Singh, in written statement, contested the suit by admitting the agreement to sell. The parties were alive to situation of readiness

and willingness and lead evidence, thus, absence of a particular issue pales in significant, thus, urges this Court for affirming the findings rendered by the lower Appellate Court.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no substance in the submissions of Ms. Anupam Sharma, for the reason that even if, there was no issue of readiness and willingness, both the parties were alive and lead evidence in this regard. Defendant No.1-Kashmir Singh, unequivocally admitted in the cross-examination, the passing of the information with regard to the subsequent agreement to sell to the defendant Jasvinder Kaur and her husband, therefore, they cannot be permitted to take plea or the benefit of *bona fide* purchaser. The sale deed is during the currency of the agreement, though the suit was filed one month, thereafter. In my view, the previous agreement to sell has been proved through direct and cogent evidence. There would be no respite from entering into subsequent agreements or sale deeds at the instance of the vendor. In my view, the lower Appellate Court has rightly exercised the discretion as enshrined under Section 20 of the 1963 Act. The target date of the execution of the sale deed was 15.08.2009, but the since the property was sold before that, which necessitated the respondent(s)-plaintiff(s) to file the suit in July 2009, without waiting for the period to expire, therefore, the readiness and willingness cannot be said to be wanting.

Keeping in view the aforementioned facts and circumstances of the case, I do not intend to differ with the findings rendered by the lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

Accordingly, the judgment and decree of the lower Appellate Court is upheld.

The suit of the respondent(s)-plaintiff(s) is decreed in toto.

However, it shall not preclude the appellant-defendant No.2 to seek the compensation or any other claim, if permissible in law, from defendant No.1-Kashmir Singh-vendor in accordance with law.

With the aforesaid observations, the appeal is dismissed.

08.04.2016
yogesh

(AMIT RAWAL)
JUDGE