

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

RSA No.1527 of 1989 (O&M)

Date of decision: 08.03.2017

Paramjit Singh

... Appellant

Vs.

Joona Ram and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sanjay Mittal, Advocate
for the appellant.

Mr. Mahabir Singh Sindhu, Advocate
for respondent No.2.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present regular second appeal, at the hands of unsuccessful plaintiff, is directed against the judgment and decree dated 27.02.1989 passed by the learned first appellate Court, whereby first appeal of the plaintiff was dismissed and the impugned judgment and decree dated 14.08.1986 of the learned trial Court, partly decreeing the suit for possession by way of specific performance of agreement to sell dated 02.09.1980, declining the primary relief of specific performance and granting alternative relief of recovery of earnest money along with interest, were upheld.

Succinctly put, facts necessary for decision of the present appeal, as noticed by the learned first appellate Court in para 2 of its impugned

judgment, are that the case of the plaintiff-appellant was that Joona Ram, defendant-respondent No.1 executed an agreement for sale in his favour on 02.09.1980 vide which he agreed to sell the land owned by him measuring 13 kanals 7 marlas situated in village Patti Kirpal, Tehsil and District Sirsa, fully detailed in the head note of the plaint, for Rs.20,000/- out of which Rs.10,000/- were paid to defendant-respondent No.1 at the time of execution of the agreement and the balance amount was to be paid at the time of registration of the sale deed. It was alleged that there was bar of installments upon the suit land and as per agreement, defendant-respondent No.1 after having paid the installments and after getting the mutation sanctioned in his favour was to serve a registered notice upon the plaintiff-appellant and then the sale deed was to be executed and registered within one month from the service of such notice. The appellant-plaintiff got the possession of the suit land as per agreement but during the pendency of the suit, he was dispossessed by defendant-respondent No.1 and no notice of any kind was served upon him by respondent No.2 as stipulated in the agreement. It was alleged that the appellant-plaintiff was always willing and ready to perform his part of the contract. However, defendant-respondent No.1 malafidely executed the sale deed dated 03.03.1981 in favour of respondent No.2, which was a result of collusion between him and respondent No.2. Feeling aggrieved, the plaintiff-appellant had filed a suit for specific performance of the agreement dated 02.09.1980. It was further prayed that a decree for possession in respect of the suit land be also passed in favour of the plaintiff-appellant and against the defendants-respondents.

Defendants were served in the suit. Defendant No.1 and defendant No.2 filed their separate written statements, taking more than one preliminary

objections. Defendant No.2 claimed himself to be a bonafide purchaser by way of registered sale deed dated 03.03.1981, whereas suit came to be filed on 25.08.1981. Plaintiff filed his replications. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether defendant No.1 agreed to sell the suit land for Rs.20,000/- in favour of the plaintiff and executed an agreement to sell dated 02.09.1980 after receiving a sum of Rs.10,000/- as earnest money?
OPP
2. Whether the plaintiff was always ready and willing to perform his part of the contract and defendant No.1 defaulted to perform his part of the contract? OPP.
3. Whether defendant No.2 Bikramjit Singh is the bonafide purchaser for consideration without notice of prior agreement? OPD
4. Whether plaintiff is in possession of the land in suit as alleged?
OPD
5. Relief.

With a view to prove their respective stands taken, both the parties led their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff failed to prove his case for possession by way of specific performance of agreement to sell in toto. Defendant No.2 was found to be a bonafide purchaser without notice and for due consideration. It was also recorded by the learned trial Court that plaintiff's counsel was not interested in directing defendant No.2 to get the sale deed executed in respect of 01 kanal 01 marla of land, which had not been purchased

by defendant No.2 out of the suit land.

Finally, the learned trial Court partly decreed the suit, granting alternative relief for recovery of earnest money against defendant No.1 directing him to pay the decretal amount to the plaintiff along with interest @6% per annum from the date of filing of the suit till its realization, vide impugned judgment and decree dated 14.08.1986. Dissatisfied, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate Court, vide impugned judgment and decree dated 27.02.1989. Hence this regular second appeal at the hands of plaintiff.

The appeal was admitted for regular hearing, but injunction restraining respondent No.2 from alienating the suit land, during pendency of the appeal, was declined by this Court vide its order dated 14.06.1989. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

During the course of hearing, when specifically and repeatedly asked to refer to any evidence or material available on record to show that defendant No.2 was not a bonafide purchaser without notice and for due consideration vide registered sale deed dated 03.03.1981, learned counsel for the appellant had no answer and rightly so, it being a matter of record. In fact, defendant No.2 duly proved his case, by leading documentary as well as oral evidence to the effect that he was a bonafide purchaser without notice and for due consideration. Under these undisputed facts and circumstances, it can be safely concluded that defendant-respondent No.2 was entitled to protect his possession, being a bonafide purchaser. That is what has been held by both the learned Courts below, because of which the impugned judgments and decrees

deserve to be upheld.

Plaintiff-appellant failed to prove his case for possession by way specific performance of agreement to sell. Possession of the land in dispute is with defendant-respondent No.2 right from 03.03.1981 pursuant to the registered sale deed in his favour. As noticed above, while admitting the appeal for regular hearing, this Court did not think it appropriate to restrain defendant-respondent No.2 from alienating the suit property and the prayer made by the appellant in this regard was declined.

Further, the learned trial Court in para 26 of its impugned judgment dated 14.08.1986 has specifically recorded that counsel of the plaintiff was not interested in directing defendant No.1 to get the sale deed executed in respect of 01 kanal 01 marla of land, which had not been purchased by defendant-respondent No.2, out of the suit land. In this view of the matter, it is held that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***Ram Awadh (dead) by LRs Vs. Achhaibar Dubey, 2000 (2) SCC 428 (SC).***
2. ***Man Kaur (dead) by LRs Vs. Hartar Singh Sangha, 2010 (10) SCC 512 (SC).***
3. ***Pramod Buildings and Developers (P) Ltd. Vs. Shanta Chopra, 2011 (4) SCC 741 (SC).***
4. ***Mehar Singh Vs. Mohinder Pal, 2007 (4) ICC 737 (P&H).***

5. *Lavinder Kumar Sharma Vs. Parmod Kumar, 2011 (1) RCR (Civil) 678 (P&H).*

Before arriving at its judicious conclusion, learned first appellate Court reconsidered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate Court in para 13 of its impugned judgment, which deserve to be noticed here, read as under: -

“First of all I would like to discuss the point of possession. In the documents Ex.D3 and D4 it is the respondent No.2 who has been in the cultivating possession of the suit land and there is no mention of the name of plaintiff-appellant in both these documents. When the plaintiff-appellant is not in possession of the suit land, the question of dispossession of the plaintiff-appellant by the defendant-respondent No.2 does not arise. Secondly, the notice Ex.P5 does not bear the name of the respondent No.2 nor it was served upon him. In that view of the things how it can be said that the respondent-defendant No.2 was well aware of the execution of the agreement for sale, if any, executed by the defendant-respondent No.1 in favour of the plaintiff-appellant on 2.9.80. It is also not believable that the plaintiff-appellant being an advocate would have been simply dispossessed by the respondent No.2. Moreover, the notice Ex.P5 is dated 30.7.81 and the alleged sale deed was executed on 3.3.81. In the case in hand it is also not believable that the plaintiff-appellant would have been sitting idle for such a long period of four months when the sale deed was

executed on 3.3.81 and he come to know about this fact. With these observations I am of the considered opinion that the respondent No.2 Bikramjit Singh was not aware of the previous agreement executed by the respondent No.1 in favour of the plaintiff-appellant, if any and the learned trial Court has rightly held him that he is a bonafide purchaser for consideration and there are no grounds to interfere with these findings of the learned trial Court recorded on issue No.4, and the plea of dispossession of the plaintiff-appellant during the pendency of the suit by the respondent No.2 does not inspire any confidence. Rather no date of dispossession has been given in the application 30.5.86 or in the deposition of the plaintiff-appellant. The facts of the cases cited by the learned counsel for the respondents were entirely different from the instant case. As such they are not attracted in the present case.”

Learned counsel for the appellant, during the course of arguments, could not point out any patent illegality or perversity in either of the impugned judgments passed by the learned Courts below, recording their concurrent findings of facts. He was also unable to point out any question of law, much less substantial question of law, which is sine qua non for entertaining any regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality has been found in either of the impugned judgments and decrees passed by both the learned Courts below, the same deserve to be upheld. The regular second appeal, having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

08.03.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No