

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

215

**RSA-1667-2012
Decided on : 16.8.2017**

VIJAY PAL

...APPELLANT

VS

MADAN SINGH AND ORS.

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Zorawar Singh, Advocate for
Mr. N.S.Shekhawat, Advocate
for the appellant.

None for respondent No. 1.

Mr. Gopal Sharma, Advocate
for respondent No. 2.

Ms. Pratibha Yadav, Advocate
for respondents No. 4 and 5.

AJAY TEWARI, J.(Oral)

This appeal has been filed against the judgment of the Lower Appellate Court allowing the appeal filed by the respondent No.1 (intending purchaser). By that appeal the respondent No.1 had claimed that the trial Court had erred in not granting him the relief of specific performance and in only granting the alternate relief of refund of earnest money. The appellant claims to be a bona fide purchaser and that plea was accepted by the trial Court. However, the Lower Appellate Court held that to establish the plea of being a bona fide purchaser it was incumbent upon the appellant to appear in the witness box and stated so on oath and subject himself for cross-examination but in the case in hand neither the appellant appeared as a witness nor he led

any evidence to this effect. As per the Lower Appellate Court the trial Court had erred in accepting his claim only on the basis of pleadings. Counsel for the appellant has not been in a position to deny that the appellant neither appeared as a witness himself nor led any evidence to prove that he was a bona fide purchaser. He has only argued that once the earlier agreement to sell was an unregistered document there was no way in which he could have come to know about any cloud on the title. In my opinion, this cannot be a complete argument. Even if this fact is accepted it would still incumbent upon the party setting up a claim of bona fide purchase to appear in the witness box because there may be some specific questions which can be asked in cross-examination which may betray the fact that he knew about the earlier transaction.

In the circumstance, I regret my inability to agree with the argument of counsel for the appellant.

The appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

16.8.2017
anuradha

(AJAY TEWARI)
JUDGE

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