

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

**RSA No.1766 of 2012  
Date of Decision: 22.11.2017**

Vijay Kumar

...Appellant

**Versus**

Sudarshan Kumar Sarin and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present:** Mr.Kulbhushan Sharma, Advocate for the appellant.  
Mr.Gaurav Aggarwal, Advocate for respondent No.1.  
Mr.Neeraj Kumar Jain, Sr. Advocate with  
Mr.T.N.Singh, Advocate and  
Mr.Nitin Jain, Advocate for respondent No.2  
Mr.Deepak Manchanda, Advocate for respondent No.3.

**ANIL KSHETARPAL, J.**

Plaintiff appellant is in regular second appeal against the concurrent findings of fact arrived at by the courts below. Plaintiff had filed a suit on 6.10.1989 to specifically enforce agreement to sell dated 7.10.1986 with respect to Plot No.132, Sector 21-A, Fardiabad, measuring 1000 sq. yards. Plaintiff has also impleaded defendant No.2, a purchaser of the property through sale-deed dated 16.5.1987.

Defendant No.1 in the written statement pleaded that in fact plaintiff is a property dealer and had helped defendant No.1 in getting the plot allotted. Plaintiff had advanced some amount, which has been refunded and he had waived his right under the agreement to sell. On the other hand, defendant No.2 pleaded that he is a bonafide purchaser for sale consideration and he has been transferred plot after getting due permission from Haryana Urban Development Authority 'HUDA' for short),

the authority which allotted the plot to defendant No.1. Defendant No.2 further pleaded that he has paid extension fees on 11.6.1987, 31.12.1988 and 27.3.1989. Defendant No.2 next asserted that he applied for sanction of the building plan for construction of the house on 21.6.1989 and he partially completed the construction on 21.10.1989. Both the courts on appreciation of the evidence have chosen to dismiss the suit filed by the plaintiff.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments and records of the courts below.

As per the agreement to sell dated 7.8.1986, possession of the plot was delivered to the plaintiff. It is an admitted position on the record that the plaintiff is not in possession of the plot. In fact, some construction has been raised by defendant No.2 after getting permission from HUDA. Plaintiff has failed to explain that how he went out of possession. Still further, a reading of the agreement to sell would show that originally the transfer of the plot was to be completed within a period of six months. However, it was substituted by a period of 18 months. It is also admitted fact that the plaintiff neither took any step for getting the permission to get a plot transferred in his favour from HUDA, during this period of three years, i.e. 7.10.1986 to 6.10.1989 nor he sent a notice to the defendant, calling upon him to transfer the plot.

Plaintiff is a resident of the same city. He had the knowledge when possession of the plot was taken by defendant No.2 and he

started construction. Still further plaintiff has pleaded that at the time of agreement to sell a boundary wall and garage had been constructed by defendant No.1. However, the assertion made by the plaintiff stands falsified by the evidence led by the defendant. Defendant raised construction on an open plot after getting permission from HUDA, vide application dated 21.6.1989. Plaintiff has failed to lead any evidence on the record to prove that a boundary wall or a garage had been constructed by defendant No.1.

For the reasons recorded above, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The appeal is hereby dismissed.

**22.11.2017**  
**mks**

**(ANIL KSHETARPAL)**  
**JUDGE**

**Whether speaking/reasoned: Yes/No**

**Whether Reportable: Yes/No**