

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

RSA No.3297 of 2013
Date of Decision: 21.8.2017

Surinder Singh

... Appellant

Versus

Manjit Singh and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Naveen Sharma, Advocate for the appellant

RAJIV NARAIN RAINA, J. (Oral)

1. This second appeal is directed against the judgments and decrees of the courts below dismissing the suit of the plaintiff for possession by way of specific performance of the agreement to sell dated 10th December, 1999 executed by him and the 1st defendant.

2. Merely because the proposed vendor 1st defendant took advantage of the situation created by the plaintiff when he withdrew his suit for permanent injunction against the vendor with liberty to file a suit for possession by way of specific performance, and thereby lost his temporary injunction staying alienation, the plaintiff cannot complain that in the two days intervening when the previous suit was withdrawn and fresh suit was filed, the vendor had in the meanwhile sold the property to the 2nd defendant by registered sale deed dated 14th December, 2000.

3. The sale deed between the 1st and 2nd defendants had come into existence when there was no stay restraining the vendor from selling the suit property. It may be noted that the agreement to sell entered into between the 1st defendant and the plaintiff was earlier to the subsequent

sale agreement between the 1st defendant and defendant no.2, but that makes no difference in law because it was the plaintiff who first initiated litigation by filing the suit for permanent injunction even before the target date fixed for execution of sale deed, seeking restraint against alienation by the 1st defendant.

4. If the plaintiff's legal strategy went awry, then he has only himself to blame and would have hardly any remedy in law to unsettle the sale by registered conveyance of immovable property to third party for valuable consideration and stamp duty paid or revenue. The jurisdiction to enforce an agreement of sale is discretionary. Plaintiff could have written to the Sub Registrar before withdrawing the suit not to register any sale deed of the suit property so that the 2nd defendant had notice of sale agreement and not plead purchase without notice, but did not move a little finger to guard his interest, as perceived.

5. The courts below have concurrently concluded that the suit deserves to be dismissed for specific performance and instead, alternative relief of refund of earnest money has been ordered which is the equitable way to balance out the case.

6. Moreover, this appeal was filed in 2013 and has been kept in urgent motion by seeking adjournments after adjournments without making any effort to argue the case on merits. In a case of specific performance it would be neither fair nor proper to disturb the decree dated 30th August, 2012 passed by the first appellate court dismissing the suit. The buyer of the property would have remained convinced that the appellate decree had not been challenged before any Court of law since he would have no notice of this appeal pending for the last almost 5 years.

7. On the basis of the present facts and circumstances and the evidence and materials on record justifying a decree in favour of the plaintiff, it is not possible for this Court to interfere with the findings of fact recorded by the courts below and the discretion exercised judiciously to deny the principal relief by choosing the alternative prayer as a better course to be adopted. Discretion in second appeal is not open to substitution of opinion on the same set of facts when the materials on record have been appreciated twice over. The judgments and decrees of the courts below ex facie do not suffer from any illegality, irregularity or neither perversity nor can the same be said to be tainted with any error apparent on the face of record so as to require interference by this Court in an appellate decree. No question of law, much less a substantial one, arises for consideration in this appeal.

8. For the foregoing reasons, this appeal is held to be without substance and is dismissed.

21.8.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No