

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

RSA No.1508 of 2017 (O&M)

Date of decision: 02.06.2017

Smt. Bhateri (deceased) through L.Rs.

..Appellants

Versus

Satbir and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Jaswant Jain, Advocate
for the appellants.

Mr. Vivek Khatri, Advocate
for the caveators-respondents.

Daya Chaudhary, J.

The present regular second appeal has been filed by the legal representatives of Smt. Bhateri, who was defendant No.2 before the trial Court.

Plaintiffs-respondents, namely, Satyaveer and Vijay Kumar filed a suit for specific performance against defendants, namely, Ram Swaroop and Smt. Bhateri seeking relief that the defendants be directed to execute the sale deed of the said suit land. The suit filed by the plaintiffs was decreed vide judgment and decree dated 30.11.2012 and they were held entitled to receive an amount of ₹4,50,000/- as earnest money along with interest @ 6% per annum from the date of execution of agreement to sell till its realization from defendant No.1-Ram Swaroop.

Aggrieved by the said judgment and decree dated 30.11.2012 passed by the trial Court, the plaintiffs filed appeal before learned Additional District Judge, Rewari, which was allowed vide judgment and

decree dated 05.10.2016 and the judgment and decree passed by the trial Court was modified by holding that the plaintiffs were having good case for getting a decree for specific performance of the suit land and the trial Court has wrongly declined the claim of specific performance. The appellants/plaintiffs were held entitled for a decree of specific performance as per agreement to sell dated 01.12.2005 and 31.08.2006. Respondent-defendant No.1 Ram Swaroop was directed to execute the sale deed by appearing before the Sub Registrar concerned on receiving the payment of balance sale consideration from the plaintiffs, failing which, the plaintiffs were held entitled to get the sale deed executed in their favour through the Court. It was also held that sale deed No.1979 dated 02.01.2007 executed by defendant No.1-Ram Sarup in favour of defendant No.2-Smt. Bhateri was of no value in the eyes of law and as such, the sale deed as well as the revenue entries based on the sale deed were directed to be ignored. Defendant No.2-Smt. Bhateri was held entitled to get back its money along with interest from vendor-Ram Sawrup.

Now defendant No.2-Smt. Bhateri through her L.Rs. is appellant before this Court in the regular second appeal and has challenged the judgment and decree passed by the Lower Appellate Court, whereby, the judgment and decree passed by the trial Court has been reversed.

Learned counsel for the appellants submits that proper and specific issues were not framed and a great prejudice has been caused to appellants-defendant No.2. The plaintiffs filed a suit for specific performance against the defendants on 29.03.2007. Defendant No.1 entered

into an agreement to sell with plaintiffs on 01.12.2005 and paid an amount of ₹2,00,000/- as earnest money. Said agreement to sell was executed in presence of witnesses as defendant No.1 was in need of money. The plaintiffs were always ready and willing to get the sale deed executed by giving balance sale consideration but defendant No.1 in order to grab the money advanced by the plaintiffs, got executed the sale deed in favour of defendant No.2 on 02.01.2007. Learned counsel further submits that said sale deed was illegal, null and void and not binding upon the rights of the plaintiffs as defendant No.2 was having full knowledge about the execution of agreement in favour of plaintiffs. Learned counsel also submits that the Lower Appellate Court has wrongly reversed the well-reasoned judgment and decree passed by the trial Court and a wrong finding has been given that defendant No.2 was not a *bonafide* purchaser. It is also the argument of learned counsel for the appellants that from the very beginning, it was the case of defendant No.2 that the remaining amount was received by defendant No.1 at his house and thereafter, he executed sale deed on 02.01.2007 in favour of defendant No.2. Learned counsel also submits that a wrong finding has been given by the Lower Appellate Court that the defendants are relatives and have resided in the same house and a presumption was drawn that they must be knowing about the agreement to sell.

Learned counsel for the respondents submits that the well-reasoned and detailed finding has been given while allowing the appeal filed by the plaintiffs-respondents. It has categorically held that defendant No.2

was not a *bonafide* purchaser as she had failed to prove the payment of sale consideration made to defendant No.1. No sale consideration was admittedly paid before Sub Registrar at the time of registration of sale deed dated 02.01.2007. Defendant No.2 had failed to lead any convincing evidence to establish that it was a case of *bonafide* purchaser for consideration with notice.

Heard arguments of learned counsel for the parties and have also perused the judgments and decrees passed by the trial Court as well as Lower Appellate Court and other documents available on the file.

The facts relating to filing of suit for specific performance by the plaintiffs against defendants; decretal thereof by holding the plaintiffs entitled to receive that amount of ₹4,50,000/- as earnest money along with interest; thereafter filing of appeal by the plaintiffs before learned Additional District Judge and allowing thereof are not disputed.

As per case of plaintiffs-respondents No.1 and 2, defendant No.1-Ram Sawrup has entered into an agreement to sell dated 01.12.2005 regarding 8 kanal land for sale consideration of ₹5,00,000/- and received an amount of ₹2,00,000/- as earnest money. The date for execution of sale deed was fixed for 30.11.2006. Thereafter, defendant No.1-Ram Sawrup received an amount of ₹2,50,000/- on 31.08.2006 and extended the time to get the sale deed executed upto 30.03.2007 by making endorsement, which was duly attested by his wife Nirmala Devi. Defendant No.1-Ram Sawrup also executed sale deed No.1979 dated 02.01.2007 in favour of defendant No.2-Smt. Bhateri. The plaintiffs filed the suit on 29.03.2007 for specific

performance of agreement to sell dated 01.12.2005 and 31.08.2006. It was proved on record that appellants-defendant No.2 was not a *bonafide* purchaser as she had failed to prove the sale consideration made to defendant No.1. Even no sale consideration was paid before Sub Registrar at the time of registration of sale deed dated 02.01.2007. There was no reference of agreement to sell dated 09.03.2005 in the sale deed and also payment of ₹2,00,000/- as earnest money. The Lower Appellate Court has held that for accepting the sale consideration, no receipt or any other document could be proved on record. The trial Court has declined the relief of specific performance. Although defendant No.2 came with the plea that an inquiry was made from the neighbours before getting the sale deed of the land in dispute but none was examined to prove this fact. Appellants-defendant No.2 had failed to prove that any such inquiry was made.

The finding recorded by the Lower Appellate Court is reproduced as under: -

“12. For the reasons discussed above, this court finds that plaintiffs/appellants have a good case for getting a decree for specific performance of the suit-land. Learned trial court has wrongly declined the decree of specific performance through impugned judgment & decree dated 30.11.2012. Hence, impugned judgment & decree passed by learned trial court is liable to be modified to that extent. Consequently, appeal filed by plaintiffs/appellants is allowed with costs throughout. Resultantly, trial court judgment & decree dated 30.11.2012 is hereby modified and appellants/plaintiffs are held entitled

for a decree for specific performance of land situated at village Tihara, Tehsil Bawal, District Rewari as per 'Agreements to Sell' dated 01.12.2005 & 31.08.2006 regarding suit-land as described in detail in para No.1 of the plaint for which respondent No.1/defendant No.1 Ram Sarup is hereby directed to execute the sale deed by appearing before the Sub Registrar concerned on or before 05.01.2017 on receiving the payment of balance sale consideration from the appellants/plaintiffs, failing which appellants/plaintiffs would be entitled to get the sale-deed executed in their favour through the court.

13. Needless to say, sale-deed No.1979 dated 02.01.2007 (Exh.DW2/B) executed by defendant No.1 Ram Sawrup in favour of defendant No.2 Smt. Bhateri is of no value in the eyes of law. Hence, this sale-deed as well as all the revenue entries based on this sale-deed are liable to be ignored. In view of judgment Smt. Niranjana Kaur Vs Financial Commissioner, Revenue - 2011(1) Civil Court Cases 168 (P&H)(FB), vendee Smt. Bhateri will always be entitled to get back its money alongwith interests & costs, etc., from the vendor Ram Sawrup.”

On perusal of the findings recorded by the lower Appellate Court and on the basis of evidence available on record, it has not been proved that defendant No.2 was a *bonafide* purchaser. Not only the payment of sale consideration made to defendant No.1 was proved but no such amount was paid before the Sub Registrar at the time of registration of sale deed dated 02.01.2007. Even there was no reference of agreement to sell dated 09.03.2005 and payment of ₹2,00,000/- as earnest money.

Accordingly, I find no merit in the contentions raised by learned counsel for the appellants and as such, the appeal being devoid of any merit is, hereby, dismissed.

02.06.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes