

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

**RSA No.1862 of 2017 (O&M)
Date of Decision: August 16, 2017**

Komal Manjit Singh and others

... Appellants

Versus

Dharampal Gupta

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vijay Jindal, Sr. Advocate, with
Mr. Abhinav Oberoi, Advocate
for the Appellants.

ANIL KSHETARPAL, J.

Defendants Nos.1 to 3 are appellants in this Regular Second Appeal, arising out of the suit for specific performance of agreement to sell.

Detailed facts have been noticed by the Courts below, however, to complete the narrative, some facts are being noticed.

Jarnail Singh was the original owner of the property in dispute. He entered into an agreement to sell for sale of the property in dispute with defendant No.1/appellant No.1- Komal Manjit Singh. In the agreement to sell, Komal Manjit Singh was authorised to enter into a further agreement to sell on the basis of an agreement dated 23.06.2008. Komal Manjit Singh entered into an agreement to sell with plaintiff Dharampal Gupta on 08.09.2008.

On the basis of the agreement to sell dated 23.06.2008 executed by Jarnail Singh in favour of Komal Manjit Singh, sale deed was executed

in favour of defendant Nos. 1 to 3.

Dharampal Gupta-plaintiff filed a suit seeking specific performance of agreement to sell dated 08.09.2008. Defendants contested the suit. A joint written statement was filed by all the defendants and defendants No.2 and 3 pleaded that they are bona fide purchasers through sale deed dated 23.03.2009 and they do not have any agreement to sell with the plaintiff.

Learned trial Court dismissed the suit on the ground that on the day Komal Manjit Singh entered into an agreement to sell, he was neither owner of the property nor having General Power of Attorney of the original owner. Therefore, the agreement to sell was not enforceable.

Plaintiff filed the first appeal, which has been accepted. Defendants No. 1 to 3 have filed this Regular Second Appeal against the judgement passed by the learned first Appellate Court. Learned counsel for the appellants has submitted that as per Section 13 of the Specific Relief Act (for short 'the Act') the decree for specific performance could only be passed with respect to the share purchased by Komal Manjit Singh. He further submitted that as per Section 13 (1)(a) of the Act, the suit could only be decreed qua the share purchased by appellant No.1. or defendant No.1/appellant No.1 could only be compelled to make good the contract out of the interest purchased or transferred in his favour. Hence, he submits that the suit filed by the plaintiff/respondent could not be decreed against defendants No.2 and 3/appellants No.2 and 3 with respect to share purchased by them.

For appreciation of the contention, it would be appropriate to extract section 13 of the Act, which reads as under: –

“13. Rights of purchaser or lessee against person with no title or imperfect title:-

(1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely,-

(a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the

mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lessor in the property which is the subject-matter of the contract.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.”

Before advertng to the submission, it would be necessary to note few facts, which would have bearing on the decision of this case.

Defendants No.2 and 3/appellants No.2 and 3 do not claim that they were also agreement holders as per agreement dated 23.06.2008. The appellants have produced on file translated copy of agreement to sell dated 23.06.2008. This agreement is executed between Komal Manjit Singh and Jarnail Singh. Appellants No.2 and 3/defendants No.2 and 3 are closely related to appellants No.1/defendant No.1, as appellant No.1 is the son of Bhag Singh/appellant No.3 and appellant No.2 is brother-in-law of appellant No.3. It is further clear from the reading of agreement to sell dated 23.06.2008 that Komal Manjit Singh was given power to enter into an agreement to sell the land involved in the agreement to sell with anyone and Jarnail Singh, the original owner shall have no objection.

From the facts narrated above, it is clear that Komal Manjit Singh in collusion with defendants No.2 and 3/appellants No.2 and 3 have tried to play fraud with the plaintiff. In the sale deed, names of appellants No.2 and 3/defendants No.2 and 3 have been added only to defeat the rights accrued to the plaintiff under agreement to sell dated 08.09.2008.

As regards submission of the learned counsel for the appellants that as per Section 13 (1)(a) of the Act, specific performance of contract can only be ordered with respect to the share of Komal Manjit Singh, has no force in view of the facts which have come on record. In this case, appellants No.2 and 3 do not claim any independent agreement in their favour. Appellants No.2 and 3 are close relatives of appellant No.1. All the three appellants have purchased the suit land under agreement to sell dated 23.06.2008. Only at the time of execution of sale deed, in the list of purchasers, names of defendants No.2 and 3/appellants No.2 and 3 have been added. All the appellants are close relatives.

For the reasons recorded above, there is no merit in the present appeal. The same is dismissed.

16.08.2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No