

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

RSA No.1981 of 2017 (O&M)
Date of decision : 31.07.2017

Jagmal Singh

...Appellant

Versus

Navneet Chouhan & another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Virender Singh Rana, Advocate for the appellant.

ANIL KSHETARPAL, J.

The defendant No.2 is appellant before this Court in the present Regular Second Appeal.

The plaintiff-respondent No.1 had filed a suit for possession by way of specific performance of the agreement to sell dated 22.05.2010 executed by defendant No.1 in his favour. A total sale consideration was fixed as ₹13,00,000/-. Out of which ₹3,00,000/- was paid as earnest money. Thereafter, another sum of ₹50,000/- was paid to the defendant No.1. The target date for execution of the sale deed as per the agreement to sell was 25.07.2010. However, on that date, there was a holiday and plaintiff attended the office of Sub-Registrar on the next date i.e. on 26.07.2010 and got his presence marked. The defendant No.1 once again approached the plaintiff and demanded another sum of ₹2,00,000/- which was paid against

receipt dated 08.08.2010 and target date for execution of the sale deed was fixed as 02.09.2010. Again on 02.09.2010, another sum of ₹1,00,000/- was paid and the date for execution of the sale deed was fixed as 30.09.2010.

The plaintiff filed a suit on 30.11.2010 seeking specific performance of the agreement to sell. However, next day, the defendant No.1 sold the property to defendant No.2. In the meantime, the defendant No.1 died. His legal representatives were impleaded as parties but they were proceeded ex parte. The defendant No.2 appeared and filed his written statement disputing the agreement to sell. The defendant No.2 also claimed that he was a bona fide purchaser.

The learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiff. The first appeal filed before the learned District Judge, Ambala has also been dismissed.

The appellant has filed this Regular Second Appeal. Counsel for the appellant has submitted that there is no pleadings that the plaintiff was always ready and willing to perform his part of the contract. He has further submitted that the Courts have wrongly relied upon an affidavit dated 26.07.2010 attested before the office of Sub-Registrar to show readiness and willingness. However, after extension of the target date, there is no evidence that the plaintiff was ready and willing.

I have heard learned counsel for the appellant and with his able assistance gone through the judgment passed by the Courts below.

The first submission of the learned counsel for the appellant is that the appellant is a bona fide purchaser. The sale in favour of the appellant is hit by principle of lis pendens. The suit was instituted on

30.11.2010 whereas sale in favour of the defendant No.2-appellant is dated 01.12.2010. The defendant No.2-appellant, as also the defendant No.1 are residents of the same village. Still further, the defendant No.1 had agreed to sell the property to plaintiff for a sum of ₹13,00,000/-. Same land has been sold to defendant No.2 for a sum of ₹6,00,000/-. The learned First Appellate Court has also recorded that various circumstances available on the file show that in fact defendant Nos.1 and 2 had colluded with each other just to frustrate the rights of the plaintiff under the agreement to sell, therefore, it is not possible to conclude that the defendant No.2 is a bona fide purchaser.

Learned counsel for the appellant has stated that when the suit was filed on 30.11.2010, the defendant No.2 was not impleaded as party, therefore, the suit cannot be said to be pending qua defendant No.2.

I have considered the submission. However, I am unable to agree with the same. The principle of lis pendens is not only applicable to the parties to the suit on that date. The principle of lis pendens is with respect to the property which is subject matter of the dispute in the suit. Therefore, the appellant cannot claim that the sale deed in his favour is not hit by principle of lis pendens.

Second argument of the learned counsel is that there is no material on the record to prove that plaintiff was ready and willing. A reading of the plaint would show that the plaintiff had pleaded that he was ready and willing. As per the original agreement to sell, target date was 25.07.2010 which was declared holiday. The plaintiff visited the office of Sub Registrar on the next date and got attested the affidavit that he is ready with balance sale consideration. Thereafter on the request of defendant

No.1, another sum of ₹2,00,000/- was paid and the target date was extended to 02.09.2010.

On 02.09.2010, once again another sum of ₹1,00,000/- was paid and target date was extended to 30.09.2010. The plaintiff had instituted the suit on 30.11.2010 within two months. Both the Courts have concurrently found that the plaintiff was ready and willing to perform his part of the contract.

For the reasons recorded above, I do not find any reasons to interfere with the concurrent findings of fact arrived at by the Courts below.

Accordingly, present Regular Second Appeal is dismissed.

31.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No