

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

R.S.A No. 2255 of 2017 (O&M)

Date of decision: 18.07.2017

Didar Singh

...Appellant

Versus

Amarjit Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.L. Batta, Senior Advocate, with
Mr. Mandeep K. Sajjan, Advocate, for the appellant.

Mr. AGS Dhillon, Advocate, for the caveator/respondent No.1.

ANIL KSHETARPAL, J. (Oral)

Appellant-defendant No.2 is in regular second appeal against the judgment passed by the learned trial Court dated 16.11.2015, affirmed in an appeal by the First Appellate Court vide judgment dated 07.03.2017.

2. Plaintiff-respondent No.1 filed a suit for possession by way of specific performance of agreement to sell dated 05.03.2010. Plaintiff claimed that defendant No.1 had entered into an agreement to sell with respect to suit property for a total sale consideration of ₹4,50,000/- out of which ₹3,75, 000/- was paid as an earnest money. It was further pleaded that target date for execution of sale deed was 15.07.2010, it was extended to 16th August, 2010 and thereafter, extended to 15th September, 2010. It was further pleaded that both the extension of the target dates were in the shape of separate writings on the original agreement to sell dated 15.07.2010. It was further pleaded that defendant No.1 executed the sale deed in favour of defendant No.2 with respect to the suit property on

11.05.2010. That is how defendant No.2 was added as party. It was pleaded that sale deed and resultant mutation are absolutely illegal, null and void and not binding on the rights of the plaintiff.

3. Defendant No.1 did not appear, despite service. Hence proceeded ex-parte. Defendant No.2, a subsequent purchaser filed its written statement and denied execution of agreement to sell by defendant No.1 in favour of plaintiff. Defendant No.2 pleaded that defendant Nos.1 and 2 are real brothers and defendant No.1 has sold the property in dispute in favour of defendant No.2 through legal and valid registration sale deed dated 11.05.2010 for value consideration of the property and possession of the property has also been delivered to defendant No.2. Defendant No.2 further claimed that he is a bonafide purchaser for value consideration without notice.

4. Learned trial Court after appreciating evidence available on the file recorded a finding of fact that agreement to sell dated 05.03.2010 executed by defendant No.1 in favour of the plaintiff is proved on the file. It was further held that at the time of execution of agreement to sell ₹3,75,000/- was paid as an earnest money.

5. Learned trial Court further found that plaintiff was ready and willing to perform his part of the contract and sale in favour of defendant No.2 was not bonafide transaction and, therefore, defendant No.2 is not a bonafide purchaser. Learned trial Court recorded that firstly, defendant Nos.1 and 2 are real brothers, secondly, total sale consideration with respect to sale deed in favour of defendant No.2 is only ₹2,20,000/- whereas the agreement to sell in favour of the plaintiff with respect to the same land was for ₹4,50,000/-. Therefore, it is obvious that transfer of the property in

favour of defendant No.2 is not a bonafide transaction. Learned trial Court, thus, decreed the suit filed by the plaintiff and directed defendant No.1 to execute the sale deed in favour of the plaintiff within a period of two months. Sale deed executed by defendant No.1 in favour of defendant No.2 on 11.05.2010 was declared illegal, null and void.

6. Defendant No.2 - Didar Singh filed first appeal. Learned First Appellate Court also after re-appreciating the entire evidence available on file, dismissed the appeal filed by defendant No.2.

7. I have heard learned counsel for the appellant-defendant No.2 as also learned counsel for the caveator on behalf of plaintiff-respondent No.1. Learned counsel for the appellant has made three submissions:-

i) defendant No.2 is infact a bonafide purchaser for valuable consideration and, therefore, sale in favour of defendant No.2 has to be protected;

ii) plaintiff in his plaint has not made any assertion that defendant Nos. 1 and 2 are real brothers. No evidence has been led to that effect. Therefore, a finding of the Court that defendant Nos. 1 and 2 are brothers is not based on the pleading and evidence;

iii) conduct of the plaintiff dis-entitles the plaintiff for discretionary relief as per Section 20 of the Specific Relief Act, 1963.

8. With regard to the first point it is apparent from memo of parties that defendant Nos. 1 and 2 are brothers. Both are living in the same village. Defendant No.1 has executed the sale deed in favour of defendant No.2 much below the market price. Defendant No.1 had entered into an

agreement with plaintiff for sale of the property subject matter of suit for a total sale consideration of ₹4,50,000/-. However, sale deed in favour of defendant No.2 is just for a sum of ₹2,20,000/-. Defendant No.1 transferred the property in favour of defendant No.2 his real brother to create a defence in the present case. In the facts and circumstances of the case, I do not find that defendant No.2 is infact a bonafide purchaser.

9. With respect to second point, it is sufficient to say that defendant No.2 filed his written statement and stated that defendant No.1 is his real brother, as noticed by the trial Court while noticing pleadings, which is not shown to be incorrect. In view of the admission made by the appellant in his written statement, no further pleadings or evidence was required.

10. With regard to the next submission of learned counsel for the appellant that the Court has failed to exercise discretion vested in it, learned counsel submitted that conduct of the plaintiff dis-entitles him the relief of specific performance of the agreement to sell. I have considered the submission. Reading of judgment passed by the learned trial Court would show that the appellant did not raise such contention before the trial Court. Even before me, learned counsel for the appellant has not been able to point out conduct which dis-entitles the plaintiff the relief of specific performance of agreement to sell.

11. Section 20 of the Specific Relief Act provides that the Court should exercise the discretion in just and equitable manner. I do not find any reason to deny the relief of specific performance to the plaintiff.

12. Learned counsel for the appellant has failed to bring to my notice any substantial question of law involved in the present appeal.

Learned counsel has further failed to point out any error falling within the scope of Section 41 of the Punjab Courts Act, 1884.

13. Taking into consideration the pleadings and the evidence led as also the judgments passed by the two Courts, the present appeal is found to be without any merit, hence dismissed.

July 18, 2017
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(Anil Kshetarpal)
Judge

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