

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

**RSA No.4629 of 2017 (O&M)
Date of Decision: 03.10.2017**

Jagga @ Joginder Singh

... Appellant

Versus

Rishi Parkash and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Suresh Kumar Kaushik, Advocate,
for the appellant.

ANIL KSHETARPAL, J. (ORAL).

CM 12198-C of 2017

For the reasons stated in the application, which is supported by an affidavit, the delay of 383 days' in filing the appeal is condoned.

Main Case.

Defendant No.3 is in Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below.

The plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 30.01.2008, through which 700 sq. yds. plot was agreed to be sold for a total consideration of Rs.5,60,000, out of which Rs.1,00,000/- was paid as earnest money. As per the agreement to sell, the target date for execution and registration of the sale deed was fixed as 30.05.2008. The agreement to sell was duly signed by defendants No.1

and 2.

Since defendants No.1 and 2 did not execute the sale deed, therefore, the suit for possession by way of specific performance was filed.

Defendants No.1 and 2 admitted the execution of the agreement to sell, however, pleaded that they had received Rs.80,000/- only as earnest money and not Rs.1,00,000/-.

Defendant No.3/appellant purchased the property vide sale deed dated 8.7.2009 i.e. during the pendency of the suit.

Both the Courts below after appreciating the evidence available on the file, decreed the suit filed by the plaintiff. It may be significant to note that the first appeal was preferred only by defendant No.3 i.e. the subsequent purchaser/appellant.

Learned counsel for the appellant has argued as under: –

1. The land agreed to be sold by the agreement to sell in favour of the plaintiff is different than the land sold to the defendant.
2. The sale deed in favour of defendant No.3 is with respect to 750 sq. yds. and, therefore, defendant No.3 is entitled to those 50 sq. yds. of land.
3. Defendant No.3 is the bona fide purchaser.

I have heard the learned counsel for the appellant and with his able assistance gone through the judgements passed by the Courts below as well as the copy of the agreement to sell Ex. P1 in favour of the plaintiff.

With respect to first argument, it is suffice to notice that neither such argument was raised nor dealt with by the Courts below. In Ex.

P1, the land is identified with Rectangle numbers, Khewat numbers and Khatauni numbers. The land is part of a bigger Khata. The agreement to sell in favour of defendant No.3 refers to Killa numbers but it is out of the same Khewat. The land is in the shape of a plot. Since this issue was neither pressed nor dealt with by the Courts below, therefore, this Court cannot allow such an argument to be raised for the first time. In any case, a bare look at both the agreements would show Khewat Nos.32, 33 and 34 and in both the agreements even Khata No.3 is the same. Hence, I do not find any force in the first submission of the learned counsel for the appellant.

The second argument raised by the learned counsel for the appellant is that the defendant/appellant has purchased 750 sq. yds. of land whereas the agreement to sell in favour of the plaintiff is with respect to 700 sq. yds. There is some substance in the argument of the learned counsel. However, the learned Courts below have decreed the suit for specific performance as per the agreement to sell dated 30.01.2008. The plaintiff is only entitled to 700 sq. yds. of land as agreed to be sold vide agreement to sell dated 30.01.2008. The Courts have ordered specific performance of agreement to sell.

The last submission of the learned counsel for the appellant is that the appellant is a bona fide purchaser. It is not in dispute that the appellant purchased the land during the pendency of the suit. The sale in favour of the plaintiff is hit by the rule of lis pendens.

In view of the above, I do not find any good ground to interfere with the concurrent finding of fact recorded by the Courts below.

The appeal is dismissed.

03.10.2017
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(ANIL KSHETARPAL)
JUDGE

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