

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

RSA No.4642 of 2017 (O&M)

Date of decision : 06.10.2017

Smt. Saroj Devi

...Appellant

Versus

Dinesh Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nipun Vashist, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.12358-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, application is allowed.

Deficiency in the Court fees has been made good. Delay, if any, is condoned.

Main Case

Defendant No.2, the subsequent purchaser is in appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiff-respondent No.1 (herein) had filed a suit for possession by way of specific performance of the agreement to sell dated 11.10.2010. The plaintiff had also sought cancellation of the sale deed by defendant No.1 in favour of defendant No.2.

Defendant No.1 did not choose to contest the suit. Defendant

No.2, the subsequent purchaser vide sale deed dated 23.02.2011 had contested the suit.

Both the Courts below after appreciating the evidence available on the file have concurrently found that the agreement to sell is proved and the sale in favour of defendant No.2 is not bona fide.

Learned counsel for the appellant has submitted that the learned trial Court did not give the detailed findings on the issue of defendant-appellant being bona fide purchaser. He has submitted that the defendant-appellant had led oral evidence.

Learned trial Court while discussing issue No.7 has held that defendant No.2 has just proved the sale deed and has led no evidence. Probably, the trial Court wanted to say that no documentary evidence has been led. It is not in dispute that defendant Nos.1 and 2 are resident of same village. In the village, the moment a piece of land is sought to be sold, it is known to everybody. Still further, the sale deed dated 23.02.2011 is a direct sale without previous agreement to sell. Apart therefrom the agreement to sell in favour of the plaintiff was for a total sale consideration of ₹2,00,000/- whereas the sale in favour of the appellant is for a consideration of ₹1,73,500/-. A prudent seller would not sell the property for a lesser consideration than what he was to receive pursuant to the previous agreement. Still further, both the Courts below have appreciated the evidence available on the file and recorded a concurrent finding of fact that defendant No.2-appellant has failed to prove that she is a bona fide purchaser.

Learned counsel for the appellant has further submitted that the appellant being a subsequent purchaser is entitled to at least refund of the

amount.

There is substance in the argument. It has been held by the Hon'ble Supreme Court of India that in case of property having been sold subsequently, the subsequent purchaser would join the original owner in executing the sale deed. In such a case, the balance amount payable would be kept by the Executing Court with itself and the appellant shall be at liberty to move appropriate proceedings for recovery of the same.

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

Regular Second Appeal is dismissed.

06.10.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No