

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

141

Date of decision: 18.12.2017

1. RSA No.71 of 2017 (O&M)

Sukhjinder Kaur

..... Appellant

Versus

Balbir Singh and others

..... Respondents

2. RSA No.5350 of 2017 (O&M)

Tek Chand and another

..... Appellants

Versus

Balbir Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- None for the appellant (in RSA No.71 of 2017).

Mr. Karan Bhardwaj, Advocate
for the appellants (in RSA No.5350 of 2017).

ANIL KSHETARPAL, J. (ORAL)

CM-141-C-2017 in RSA No.71 of 2017

Application is under Order 41 Rule 27, CPC for permission to
lead additional evidence.

The appellant has stated in the application as under:-

“That the defendant No.1/appellant before the Ld. Trial Court was not advised by her counsel to lead the evidence qua said sale deed due to the reasons best known to them. However, the defendant No.1/appellant had moved an application dated 06.08.2016 U/O 41 Rule 27 CPC before the First Appellate Court but the same has not been decided by the Ld. First Appellate Court, which has caused great injustice to the appellant. Hence, the present application is being filed before

this Hon'ble Court on the same grounds.”

It is clear that the appellant was in the knowledge of the sale deed sought to be produced in additional evidence. However, she did not produce the same. I have examined the additional evidence also. The appellant is wanting to produce a copy of the sale deed dated 09.03.2004 to show that the market value at that time was Rs.1,70,000/- per acre.

In the considered opinion of this Court, the price of the land to be sold depends upon so many factors including location, quality of land, connectivity with the main road etc.

In view thereof, there is no substance in the application for additional evidence. Hence, the application is dismissed.

RSA No.71 of 2017

Vide this judgment, I shall be disposing of two regular second appeals bearing RSA No.71 of 2017 titled 'Sukhjinder Kaur Vs. Balbir Singh and others' and RSA No.5350 of 2017 titled 'Tek Chand and another Vs. Balbir Singh and others' arising out of a common judgment.

Defendants-appellants are in separate appeals against the concurrent findings of fact arrived at by the Courts below.

Plaintiff-respondent filed a suit for possession by way of specific performance of agreement to sell dated 21.04.2005. Defendants No.1 and 2 did not contest the suit. However, remaining defendants i.e. 2-A and 2-B contested the suit on the ground that they are bona fide purchasers vide sale deed dated 18.05.2007.

The suit was instituted on 06.03.2007. The sale in favour of the defendants-appellants was during the pendency of the suit.

Both the Courts after appreciating the evidence available on the file decreed the suit filed by the plaintiff after recording a finding that the

agreement to sell dated 21.04.2005 and payment of earnest money has been proved. The Courts have further found that the plaintiff was always ready and willing to perform his part of the contract.

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

Learned counsel for the appellants has submitted that the appellants are bona fide purchasers as they did not know that there was any prior agreement to sell or any suit had been instituted for specific performance of the agreement to sell.

I have considered the submission. However, I do not find any substance therein. It is well settled that a purchaser lis-pendent is to swim and sink with the result of the case. A subsequent purchaser lis-pendent cannot save himself by taking a plea of a bona fide purchaser.

In RSA No.71 of 2017, defendant No.1 is the appellant. She did not appear before the trial Court despite service of notice upon her and consequently, she was proceeded against ex parte. She did not file any written statement and also did not participate during the course of trial.

Today, even learned counsel for the appellant in RSA No.71 of 2017 has chosen to remain absent. Anyhow, I have examined the judgments passed by both the Courts below. Both the Courts below have appreciated the evidence in the proper perspective and decreed the suit.

In view thereof, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Both the appeals are dismissed.

(ANIL KSHETARPAL)
JUDGE

18.12.2017
Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No