

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

RSA No.3725 of 2009 (O&M)

Date of decision : 24.07.2018

Naveen Kumar and another

...Appellants

Versus

Roop Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Zorawar Singh Chauhan, Advocate for
Mr. N.S. Shekhawat, Advocate for the appellants.

Ms. Bindu Goel, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

CM No.11299-C of 2009

For the reasons stated in the application, which is duly supported by an affidavit, delay of 1262 days in refiling the present appeal is condoned.

Application is allowed.

Main case

Defendant Nos.2 and 3 are aggrieved of the findings arrived at by the trial Court as well as First Appellate Court declaring the sale deed dated 20.02.1997 executed by defendant No.4 in favour of defendant Nos.2 and 3 to be illegal, null and void.

It is not in dispute that the plaintiff had filed a suit for

possession by way of specific performance of the agreement to sell dated 07.08.1996.

Both the Courts have ordered that the plaintiff is only entitled to refund of the amount. Relief of specific performance of the agreement to sell has been refused. The decree passed by the Courts has become final as the plaintiff is not in appeal.

The plaintiff had also sought declaration that the sale deed dated 20.02.1997 does not adversely affect his rights. However, while ordering the refund, the Courts have also ordered that the sale deed in favour of defendant Nos.2 and 3 executed by defendant No.4 is illegal. The appellants are only aggrieved thereof. He submits that once the plaintiff failed in his main relief of specific performance of the agreement to sell, he had no locus to challenge the sale deed executed by defendant No.4 in favour of defendant Nos.2 and 3.

Learned Courts below also framed the issue only with respect to the sale deed being null and void and not binding on the rights of the plaintiff. The Executor of the sale deed i.e. defendant No.4 has never challenged the sale deed.

In these circumstances, the following substantial question of law arises for consideration:-

1. Whether while declining relief of specific performance of the agreement to sell and granting relief of refund of earnest money, a sale deed executed by the defendant/owner in favour of subsequent vendee can be declared illegal, null and void?

In the considered opinion of this Court, the findings arrived at by the First Appellate Court are clearly erroneous. If defendant No.4 has grievance against the sale deed executed by him in favour of defendant Nos.2 and 3, he can challenge the same by filing a separate suit. There cannot be inter se issue between the defendants. The plaintiff once has been held not entitled to relief of specific performance of the agreement to sell, the plaintiff had no locus standi to challenge the sale deed.

In view thereof, the present Regular Second Appeal is allowed. Judgment and decree passed by the Courts only to the extent declaring the sale deed executed by defendant No.4 in favour of defendant Nos.2 and 3 dated 20.02.1997 to be illegal, null and void, are set aside.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

24.07.2018

Pawan

(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No