

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSANo.3221 of 2010 (O&M)

Date of Decision: 03.12.2018.

Tej Ram

... Appellant

Versus

Ram Chander and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anuj Balian, Advocate
for the appellant.

Mr. Rahul Garg, Advocate
for respondent No.8.

ANIL KSHETARPAL J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the Courts below while granting only alternative relief to the plaintiff to refund the earnest money along with appropriate rate of interest after taking notice of the fact that property has already been sold by defendant Nos.1 to 7 in favour of defendant No.8 vide registered sale deed dated 27.01.2000.

No doubt, both the courts have returned a finding that the agreement to sell dated 02.02.1999 has been proved and the plaintiff was ready and willing to perform his part of the contract on 15.06.1999, the target date, fixed for execution and registration of the sale deed as per the agreement to sell. However, First Appellate Court has given 3 reasons to decline the specific performance of the agreement to sell.

- (i) Plaintiff in his plaint has asserted that the date for execution and registration of the sale deed was extended to 30.01.2000, however, no reliable evidence in this regard has been

produced.

- (ii) On 30.01.2000, plaintiff has failed to prove that he was ready and willing to perform his part of contract as there is no evidence that he visited the office of Sub-Registrar with balance sale consideration.
- (iii) There is total inaction on the part of the plaintiff after the original target date i.e 15.06.1999 for a period of 8 months.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellant has submitted that although defendant No.8 has pleaded that he is a bonafide purchaser and had enquired from the revenue official as well as other residents, however, neither the revenue official has been examined nor other persons from the plaintiff enquired have been examined, hence, defendant No.8 failed to prove that fact. He further submitted that in the pleadings defendant No.8 has not specifically denied the plea of the plaintiff that sale deed is result of collusion. He further submitted that defendant Nos.1 to 7 and 8 belong to same village and therefore the collusion must be inferred.

This court has considered the submissions.

As regards the first submission, defendant No.8 has appeared in the evidence and has deposed that he went to the Patwari (revenue official) and other concerned but did not get any knowledge of any prior agreement to sell.

On careful perusal of the cross-examination, it is clear that but for giving a general suggestion that he had a knowledge of the prior agreement to sell in favour of the plaintiff, no specific suggestion was given that defendant No.8 did not visit the Patwari or satisfied himself about the title.

As regards the argument of learned counsel that the assertion made by the plaintiff has not been denied in the written statement, the same is factually incorrect as defendant has specifically denied the assertions made in the plaint but has also pleaded that he had purchased a property for valuable consideration and sale deed had not been executed in a concealed manner as alleged.

Next submission of learned counsel for defendant Nos.1 to 7 and 8 belong to same village. It may be noticed that defendant Nos.1 to 7 are residing at Delhi. Hence, it cannot be said that since defendant Nos.1 to 7 and defendant No.8 originally belonged to same village, therefore, they would be deemed to have knowledge.

This Court while exercising jurisdiction against judgments passed by the Courts below, cannot re-hear the suit. The judgements passed by the Courts below can only be interfered with, if it is result of any substantive mis-reading or non-reading of evidence. The reasons given by both the courts below are cogent and plausible.

In such circumstances, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the courts below.

The regular second appeal is dismissed.

December 03, 2018
rekha sharma

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No