

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1453 of 2012(O&M)

Date of Order:26.09.2018

Darshan Singh and others

..Appellants

Versus

Kuldeep Singh and others

...Respondents

RSA No.4276 of 2012 (O&M)

Pritam Singh

.Appellant

Versus

Kuldeep Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Ashish Soi, Advocate,
for the appellants (in RSA No.1453 of 2012)

Mr. Ankit Grewal, Advocate,
for the appellant (in RSA No.4276 of 2012)

Mr. Puneet Jindal, Sr. Advocate, with
Mr. Lupil Gupta, Advocate,
for the respondents.

ANIL KSHETARPAL, J (Oral).

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing a suit for possession by way of specific performance of the agreement to sell dated 08.05.1996 with respect to land measuring 34 kanals and 6 marlas.

Some facts would required to be noticed.

Plaintiffs claiming agreement to sell in their favour with respect to land measuring 34 kanals and 6 marlas, filed this suit for possession by way of specific performance of the agreement to sell. It is claimed that out

of total sale consideration agreed upon between the parties i.e. Rs.4,40,000/-, earnest money amounting to Rs.1,00,000/- was paid and the target date for execution and registration was fixed as 07.11.1996. Plaintiffs have asserted that on 26.10.1996, defendant no.1, approached the plaintiffs and requested them to extend the time for execution and registration of the sale deed and under that pretext he took away the original agreement to sell with promise to return the same after getting the endorsement from the professional scribe with regard to extension of time, since, relationship between the plaintiffs and defendant no.1 were cordial, therefore, the original agreement to sell was handed over. However, defendant no.1 did not return the agreement to sell, therefore, the plaintiffs went to defendant no.1, who promised to execute the sale deed and come to the office of Sub-Registrar. However, defendant no.1 never came forward, forcing the plaintiffs to file a police complaint, wherein defendant no.1 refused to execute the sale deed. Defendant no.1 further asserted that he has executed sale deeds in favour of defendant nos. 2 to 4.

Defendant no.1 filed a written statement pleading that he had entered into an agreement to sell with defendant nos.2 to 4 on 02.03.1996 for a total sale consideration of Rs.3,25,000/-, out of which Rs.70,000/- have been paid in advance. Defendant no.1 further pleaded that the plaintiffs offered to pay more amount to defendant no.1 and compelled him to write an agreement to sell dated 08.05.1996. However, it was pleaded that the aforesaid agreement to sell was written at the residence of Mr. Sukhwinderjit Singh, deed writer at 5.00 or 6.00 PM but no payment was paid, although, it was promised. Defendant no.1 further pleaded that he has already executed sale deeds in favour of defendants no.3 to 6 dated

29.10.1996 (1 sale deed) and 30.10.1996 (2 sale deeds).

Defendant nos.2 to 6 filed separate written statement and pleaded that defendant nos.2 and 4 had agreed to purchase the land from defendant no.1 vide agreement to sell dated 02.03.1996 for a total sale consideration of Rs.3,25,000/- and earnest money of Rs.70,000/- was paid and thereafter sale deeds have been executed by defendant no.1 in favour of defendant no.2 to 6.

After framing of the issues, parties went to trial. Learned trial court found that the agreement to sell dated 02.03.1996 is suspicious. Thus, the learned trial court as well as the first appellate court decreed the suit filed by the plaintiffs for specific performance of the agreement to sell. It may be noted that the defendants-appellants failed to prove that they are bonafide purchasers of the property.

This court has heard learned senior counsels for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned senior counsel for the appellants has submitted that the plaintiffs has to stand on his own legs. He submitted that the plaintiffs cannot take benefit from the weakness of the defendants' case. He further submitted that defendant no.1, the owner, has admitted the agreement to sell, additional amount paid on 04.09.1996 and sale deeds executed, hence, defendants-appellants are bonafide purchasers of the property. He further submitted that payment of earnest money under the agreement to sell dated 08.05.1996 has not been proved. He further submitted that the original agreement to sell has not been produced by the plaintiffs, although, in the plaint, plaintiffs had given details of the terms of the agreement to sell.

Hence, he submitted that the courts below have committed an error in decreeing the suit for specific performance of the agreement to sell. He further submitted that the register of the professional scribe cannot be treated as a secondary evidence and, therefore, the courts below have erred in decreeing the suit for specific performance of the agreement to sell in absence of the agreement to sell. He further claimed that the courts have erred in granting relief of specific performance of the agreement to sell.

In Regular Second Appeal No.4276 of 2012, learned counsel for the appellant apart from adopting the arguments of learned senior counsel, has submitted that the register of the scribe regarding entry of agreement to sell dated 08.05.1996 is also interpolated. He submitted that two applications for additional evidence were filed before the learned trial court but the same were not decided.

On the other hand, learned senior counsel for the respondents pointed out that there is contradiction in the stand of the defendants. Learned senior counsel has further submitted that in the written statement both set of defendants have taken a positive stand that the land was agreed to be sold for a total sale consideration of Rs.3,25,000/-, whereas the sale deeds which have been produced are for a total sum of Rs.13,93,438/- He further submitted that in the registered sale deeds, there is neither any reference to the agreement to sell dated 02.03.1996 nor to additional payment of Rs.1,80,000/- on 04.09.1996. He pointed out that additional payment of Rs.1,80,000/- has neither been pleaded by defendant nos. 2 to 6 nor by defendant no.1. He further submitted that on careful reading of the registered sale deeds, it is apparent that no amount was paid to defendant no.1 in the presence of the Sub-Registrar and the entire amount was shown

to have been paid in advance. Hence, he submitted that defendant nos. 2 to 6 are not bonafide purchasers and in fact defendant nos.1 and defendant nos.2 to 6 have colluded. He further submitted that the agreement to sell propounded by the defendants dated 02.03.1996 is not scribed from any professional regular scribe, so as to check its veracity and genuineness with entry in the register. He further drew attention of the court to the copy of register of the scribe, which is Ex.P1 on the record. In the aforesaid register of the scribe, there is an entry with regard to agreement to sell executed by defendant no.1 in favour of the plaintiffs. The aforesaid entry in the register of the scribe to total land agreed to be sold, various parties to the agreement, total sale consideration and earnest money paid have been mentioned. The aforesaid entry also refers to the target date agreed to between the parties for execution and registration of the sale deed. The aforesaid entry in the register is duly signed by defendant no.1, who admits his signatures. Of course, he says that he was compelled to sign the agreement to sell. He submitted that in view of the aforesaid entry in the register, which was brought in the court in original, it is proved that there was an agreement to sell between the parties. He further submitted that defendant no.1 has also admitted in his written statement that he had entered into an agreement to sell with the plaintiffs. He further submitted that the agreement to sell has been proved by examining the attesting witness.

In reply to the additional arguments of learned counsel for the appellant in RSA No.4276 of 2012, learned counsel for the respondent drew attention of the court to the order passed by the court on 05.02.2007, wherein it is noticed that the first application for additional evidence has been dismissed as not pressed. He further drew attention of the court to

order dated 07.02.2007 whereby second application filed by the defendants was dismissed by the court. Hence, he submitted that the arguments of learned counsel for the appellant is factually incorrect.

As regards agreement to sell dated 02.03.1996, propounded by the defendants-appellants, it may be noted that both the courts have rightly held that the agreement to sell dated 02.03.1996 has been fabricated/antedated only to defeat the right of the plaintiffs. The alleged agreement to sell dated 02.03.1996 is Ex.D3 on the file. If one carefully looks at the endorsement on the reverse of the first page, it is apparent that the aforesaid stamp paper was purchased on 20.12.1995 from place Jeera, which is 350 Kms. a from the place where the land is situated. When defendant no.1 appeared in evidence, he had deposed that the stamp paper was purchased on the same day i.e. On 02.03.1996.

Still further, it is apparent that the additional/supplementary agreement as produced in evidence dated 04.09.1996 is not pleaded by any of the defendants. Defendant no.1 and defendant nos.2 to 6 filed separate written statements but nowhere this supplementary agreement dated 04.09.1996 has been pleaded.

As regards the argument of learned senior counsel for the appellant in RSA No.1453 of 2012, it may be noticed that there is no doubt that the plaintiffs have to stand on their own legs. In the present case, the agreement to sell has not been produced but original entry in the register of the scribe has been produced which bears signatures of the parties. In the aforesaid entry, gist of agreement to sell, namely, the total price agreed, land agreed to be sold, payment of earnest money and the target date for execution and registration of the sale deed has all been mentioned.

As regards second argument, it may be noticed that both the courts have found that defendant no.1 on the one side and defendant nos.2 to 6 on the other side have colluded, therefore, admission of defendant no.1 admitting agreement to sell in favour of defendant nos.2 to 4, would not enure for the benefit of the defendants-appellants.

As regards next argument of learned senior counsel that payment of earnest money under the agreement to sell dated 08.05.1996 has not been proved. It may be noticed that defendant no.1 has admitted the receipt of the earnest money while signing in the register of the scribe. Still further, defendant no.1 never complained that he has not received Rs.1,00,000/- as earnest money. No complaint was lodged in this regard to any authority.

Next argument of learned senior counsel that register of the professional scribe cannot be treated as secondary evidence. It may be noticed that register of the scribe is a primary evidence of entry in the register. The aforesaid entry clearly proves that there was an agreement to sell between the plaintiffs and defendant no.1. The aforesaid entry in the register, which was produced before the court at the time of evidence has signatures/thumb impressions of the parties to the agreement to sell as well as also have signatures/thumb impressions of attesting witnesses. Therefore, such entry is not a secondary evidence but a primary evidence.

As regards argument of learned senior counsel that relief of specific performance should not be granted as subsequent purchasers are bonafide purchasers.

It may be noticed that in the present case particularly when the evidence has come on file that the subsequent purchasers had forged the

agreement to sell and receipt of additional payment, subsequent purchasers cannot be permitted to defeat the rights of the plaintiffs as they are not proved to be bonafide purchasers.

Still further as noticed above, in the written statement, it has been pleaded that total sale consideration between defendant no.1 and defendant nos.2 to 4 was Rs.3,25,000/-. Whereas the sale deeds are for a total sale consideration of Rs.13,93,438/-. Not even a single paise has been paid before the Sub-Registrar. No evidence has been produced to prove that any payment was made to defendant no.1. Hence, subsequent purchasers cannot claim that they are bonafide purchasers.

Now let us deal with the argument raised by learned counsel for the appellant in Regular Second Appeal No.4276 of 2012.

As pointed out by learned counsel for the respondent, it is apparent that the argument of learned counsel is factually incorrect. This court is very sad to observe that counsel raise an argument, which is against the record. Both the applications filed for additional evidence have been decided, one was dismissed as not pressed and the second was also dismissed.

In view thereof, this court does not find any good ground to interfere.

Both the Regular Second Appeals are dismissed with costs of Rs.1,00,000/-.

September 26, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No