

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

RSA No.2464 of 2012 (O & M)
Date of Decision: 16.05.2018

Daljit Singh and another

...Appellants

Versus

Darshan Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.S. Sidhu, Advocate
for the appellants.

Mr. Gulzar Mohd., Advocate
for the respondents.

ANIL KSHETARPAL, J.

Defendants No.2 and 3, the subsequent vendees, are in the regular second appeal against the judgment passed by the learned First Appellate Court decreeing the suit for possession by way of specific performance of agreement to sell and for declaration that the sale deed executed in favour of defendants No.2 and 3 is not binding on his right.

Plaintiff has pleaded that defendant No.1 entered into an agreement to sell on 01.12.2004 with respect to land measuring 2 kanals and 7 ½ marlas for a total sale consideration of Rs.1,50,000/- out of which Rs.1,20,000/- was received as earnest money and possession was delivered. It is further the case of the plaintiff that defendant No.1 has already executed a sale deed with respect to land measuring 35 kanals and 10 marlas on 01.12.2004. However, sale deed with respect to the land in dispute in

and it was agreed that the sale deed would be executed after redemption of the mortgage. However, defendant No.1 after getting the land redeemed from the Bank sold the property in favour of defendants No.2 and 3 on 18.11.2005. Plaintiff filed a suit on 01.12.2005. Defendant No.1 contested the suit on the ground that the agreement to sell is result of fraud and fabrication and no earnest money has been paid whereas defendants No.2 and 3 pleaded that they are bona fide purchasers for valuable consideration and, therefore, their rights are protected.

Learned trial Court after recording a finding that agreement to sell and the payment of earnest money stands proved, ordered refund of the earnest money but did not chose to grant relief of specific performance of the agreement to sell whereas learned First Appellate Court after re-appreciation of evidence has found that defendants No.2 and 3 are not bona fide purchasers and, therefore, the plaintiff is entitled to possession by way of specific performance of agreement to sell.

I have 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. Now the only issue, which requires determination is whether defendants No.2 and 3 are bona fide purchasers or not?

In the considered opinion of this Court, finding of the learned First Appellate Court on the question of defendants No.2 and 3 - appellants being bona fide purchasers does not require any interference on following reasons:-

(i) Although, learned counsel for the appellants has submitted that the appellants are resident of a different village and different district,

owners of 96 kanals of land in village Rurki, Tehsil Amloh, District Fatehgarh Sahib. Once the appellants are owner of substantial land in the aforesaid village, the previous agreement to sell particularly when defendant No.1 had sold 35 kanals and 10 marlas land in favour of the plaintiffs on the same date i.e. 01.12.2004 shall be in their knowledge.

(ii) Agreement to sell in favour of the plaintiffs was for a total sale consideration of Rs.1,51,000/- whereas sale deed in favour of the appellants is for Rs.96,000/-. Learned counsel for the appellants has tried to explain that half marla land having tubewell connection has not been sold and, therefore, the amount of sale deed has been reduced. In the considered opinion of this Court, half marla land having a tubewell connection cannot be of that much value particularly when 47 marlas land is being sold for Rs.1,51,000/-

(iii) Although, the defendants-appellants when appeared in the witness-box has stated that he had seen the revenue record before purchase, however, appellants have also admitted that they do not know how to examine the revenue record. The revenue official from whom the revenue record was examined, has not been examined.

(iv) It is not in dispute that $\frac{1}{2}$ share of the tubewell along with electric connection has already been sold by defendant No.1 in favour of the family of the plaintiff vide sale deed dated 01.12.2004 while executing sale deed for land measuring 35 kanals and 10 marlas.

Appellant No.1 when appeared in the witness box as DW-3, he only states that he got the sale deed executed after due enquiry from the revenue record. However, he has not led any evidence to prove that he was

defendant No.1 in favour of the plaintiff. The entire plea of the appellants is based upon Section 19 of the Specific Relief Act, 1963. Defendants-appellants were required to lead evidence to prove that fact in which they have failed.

In view of the discussion made above, this Court does not find any good ground to interfere with the judgment passed by the learned First Appellate Court.

Regular second appeal is dismissed.

16.05.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No