

RSA No.1745 of 2016 (O & M)
RSA No.5436 of 2016 (O & M)

-1-

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

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RSA No.1745 of 2016 (O & M)
Date of Decision:10.08.2018

Bhasha

...Appellant

Versus

Dalbir Singh and others

...Respondents

RSA No.5436 of 2016 (O & M)

Dalbir Singh

...Appellant

Versus

Yasin through LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajnish K. Gupta, Advocate
for the appellant in RSA No.1745 of 2016 and
for the respondents in RSA No.5436 of 2016.

Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dhull, Advocate
for the appellant in RSA No.5436 of 2016 and
for respondent No.1 in RSA No.1745 of 2016.

ANIL KSHETARPAL, J.

By this judgment RSA Nos.1745 and 5436 of 2016 shall stand disposed of as both the appeals are arising out of the same suit and the learned First Appellate Court had also disposed of both the appeals by a common judgment.

In the considered opinion of this Court, the question of law

which arises are as follows :-

(i) “Whether relief of possession by way of specific performance of agreement to sell can only be denied merely on the ground that owners have sold the property after entering into an agreement to sell but before the institution of the suit.”

Plaintiff filed a suit for specific performance of agreement to sell dated 15.06.2005 wherein land in question was agreed to be sold at the rate of Rs.70,000/- per acre for a total sale consideration of Rs.30,46,313/-. At the time of entering into an agreement to sell, plaintiff had paid a sum of Rs.4,00,000/- as earnest money and target date for execution and registration of sale deed was fixed as 13.12.2005. Plaintiff pleads that he went to the Office of the Sub Registrar along with balance sale consideration and expenses of the stamp duty etc. but the defendants did not come present to perform their part of the contract. Plaintiff marked his presence. He thereafter, gave notice to the defendants to come and execute the sale deed on 15.12.2005 but the defendants still did not come present even on 15.12.2005, although the plaintiff again remained present. On demand another payment of Rs.4,00,000/- was paid to Sajid on 27.12.2005. Plaintiff further pleads that another notice was given to the defendants on 31.03.2006 calling upon the defendants to come and execute the sale deed.

Defendants No.1 to 5 filed written statement and pleaded that the plaintiffs had taken their thumb impression/signatures on a power of attorney so that he is able to show that he is having power to enter into an agreement to sell and find out prospective vendees. Thus, signatures and thumb impressions of the defendants were obtained by fraud. It was further

pleaded that Kosar Ali has cheated the defendants as their thumb impression and signatures have been converted into an agreement to sell. It is further pleaded that Kosar Ali impressed upon the defendants that they are the same persons, who have come to purchase the land and, therefore, sale deeds were got registered on 12.01.2006 (two sale deeds) and 14.03.2006 (one sale deed). It was further pleaded by the plaintiff that additional payment of Rs.4,00,000/- was paid to Sajid.

Learned trial Court after recording a finding that agreement to sell is proved and payment of Rs.4,00,000/- as earnest money is also proved, declined to grant relief of specific performance on the following grounds:-

(i) additional payment of Rs.4,00,000/- has not been proved as there is no receipt of payment.

(ii) plaintiff was not ready and willing to perform his part of the contract as he had only 10 lakhs in his account, although, he was to pay more than Rs.26 lakhs. Hence, the Court ordered that double of the earnest money be refunded by the defendants No.1 to 5 along with interest at the rate of 12%.

Two first appeals were preferred. One by the plaintiff and second by defendants No.1 to 5. Learned First Appellate Court held that the plaintiff was ready and willing to perform his part of the contract and is still ready and willing to perform his part of the contract, however, the Court refuse to grant relief of specific performance on the ground that the property has already been sold in favour of defendants No.6 and 7, who are in possession of the property. Thus, the judgment passed by the learned trial Court ordering recovery of double of the earnest money along with interest

was affirmed.

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 photocopy of the record provided by learned counsel for the parties, correctness whereof is not being disputed.

Learned counsel for the appellant has submitted that the learned First Appellate Court has found that the agreement to sell is proved and the plaintiff is ready and willing to perform his part of the contract. Therefore, the learned First Appellate Court erred in refusing to grant relief of specific performance. He submitted that merely because three sale deeds have been executed in favour of defendants No.6 and 7 that cannot be the ground to refuse the specific performance of agreement to sell. He further drew attention of the Court to the sale deed dated 12.01.2006 (two sale deeds) and 14.03.2006 (one sale deed). As per endorsement before the Sub Registrar, no payment has been made in the office of Sub Registrar. It is not the case of the defendants No.6 and 7 that there was any prior agreement to sell. It is further significant to note that Kosar Ali was a witness to the agreement to sell dated 15.06.2005 executed in favour of the plaintiff. Kosar Ali is also witness in all the three sale deeds executed in favour of defendants No.6 and 7. It is also the case of the defendants No.1 to 5 that Kosar Ali in fact had cheated and gave them an impression that sale deed is being executed in favour of the same party, who had entered into an agreement to sell. In such circumstances, plaintiff cannot be said to be at fault.

Let us now examine the bona fides of defendants No.6 and 7.

Bona fides of defendants No.6 and 7 are not proved for the following reasons:-

(i) Kosar Ali, attesting witness of the sale deeds in favour of defendants No.6 and 7 is also the attesting witness of agreement to sell in favour of the plaintiff.

(ii) No payment has been made before the Sub Registrar.

(iii) Defendants No.6 and 7 have not appeared in the witness-box enabling the plaintiff to cross-examine them to find out the truth. The total amount for which the three sale deeds have been executed comes to Rs.19,60,000/-. It is highly unlikely that without any prior agreement to sell directly defendants No.6 and 7 purchased the property and that also without making any payment at the time of execution of the sale deed or before the registration authority.

Now let us consider the question of law.

In the considered opinion of this Court, once it is proved on file that the plaintiff had entered into an agreement to sell and was always ready and willing to perform his part of the contract, unless there are certain other factors, specific performance of the agreement to sell cannot be denied only on the ground that the owners (prospective vendors) have sold the property in favour of someone else unless it is proved that the subsequent purchasers are bona fide purchasers. It is for the subsequent vendees to prove that they are bona fide purchasers.

In the present case, defendants No.6 and 7 have not stepped into the witness-box. No doubt, Section 19 of the Specific Relief Act grants protection to the subsequent purchasers in case the Court finds that the

transfer is for valuable consideration, the money in good faith and transferee had no notice of the original contract. Section 19 of the Specific Relief Act is extracted as under:-

***“19. Relief against parties and persons claiming under them by subsequent title.*—Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—**

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.”

In the present case as noticed earlier, defendants No.6 and 7

Entire payment of Rs.19,60,000/- is shown to be paid in advance in cash and nothing was paid at the time of execution of the sale deed.

In view thereof, question of law as framed earlier is answered in favour of the appellant.

It may be noticed that defendants No.6 and 7 have not chosen to appear, although as per office report, defendant No.6 has been personally served and defendants No.6 and 7 are husband and wife living in one house.

In view of the aforesaid, RSA-5436-2016 filed by the plaintiff is allowed whereas RSA-1745-2016 filed by the defendants is dismissed.

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

10.08.2018
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(ANIL KSHETARPAL)
JUDGE

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