

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

1. RSA No.4283 of 2013 (O&M)

Aman Garg and Another

....Appellant

Versus

Raj Kumar and Ors.

....Respondents

2. RSA No.5105 of 2013 (O&M)

Amar Garg and Anr.

....Appellant

Versus

Raj Kumar and Anr.

....Respondents

And

3. RSA No.5147 of 2013 (O&M)

Neelam Garg

....Appellant

Versus

Raj Kumar and Ors.

....Respondents

Date of Order: 25.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Dhirender Chopra, Advocate for the appellant in
RSA No.5147 of 2013.

Mr. Baldev Singh Badhran, Advocate for the appellants in
RSA No.4283 & 5105 of 2013.

Mr. R.S. Mamli, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

This common order of mine shall dispose of aforesaid three appeals since common questions of law and facts are involved in all. Out of these appeals, RSA No.5147 of 2013 is preferred by the vendor-Neelam Garg against the concurrent findings of both the courts below whereas RSA Nos.4283 and 5105 of 2013 by minor children of said Neelam Garg/Vendor whereby the suit bearing No.177 filed by Sarabati Devi has been decreed

and the suit bearing No.45 of 2003 filed by Aman Garg etc has been dismissed and the findings affirmed in appeal by lower Appellate Court. The facts are being extracted from RSA No.5147 of 2013.

It is stated that an agreement to sell dated 11.9.1997 (Ex.P.1) was entered into between Neelam Garg and Sarabati Devi in respect of land measuring 1 kanal for a sale consideration of Rs.3 lacs out of which a sum of Rs.50,000/- and Kissan Vikas Patras of Rs.2 lacs was handed over to the vendor. Since the suit property was in ownership of two minor children, it was agreed between the parties that the mother-vendor would seek permission from the court for selling 2-3rd share. Accordingly, a civil suit No.654 dated 16.11.1998 (Ex.P24) was filed in this regard. Said suit was decreed by the trial Court vide judgment and decree dated 08.11.2001 (Ex.P.31). Appellant-vendor/Neelam Garg and her minor children are stated to have sent a legal notice dated 15.1.2003 (Ex.P32) to the vendee Sarabati Devi for arranging balance sale consideration. Said notice was replied by the vendee vide Ex.P33 whereby she had agreed to appear before the Registrar on 11.2.2003. As per averments in the written statement, appellants approached the office of Sub Registrar on 11.2.2003 but the vendee did not come present with the balance sale consideration. On 30.5.2003 (Ex.D2), appellant and minor children sent legal notice regarding termination of the agreement to sell and forfeiture of the earnest money. Said notice was also replied.

Upon notice, the suit was contested by the defendants. Although defendant No.1 in her separate written statement alleged that she was bound by the agreement to the extent of her share only whereas defendant Nos.2 & 3 refused to abide by the alleged agreement. In their

written statement, defendant Nos.2 & 3 stated that no agreement to sell was entered in favour of the plaintiff besides taking the pleas of locus standi and maintainability etc.

On the basis of preponderance of evidence, the trial Court decreed the suit bearing No.177 filed by Sarabati Devi and dismissed the suit bearing No.45 of 2003 filed by Aman Garg etc and the findings of trial Court were affirmed in appeal by lower Appellate Court.

Sh. Dhirender Chopra, learned counsel for the appellants submitted that the simplicitor suit for specific performance of the agreement to sell in the absence of challenge to the notice/cancellation of the agreement, was not maintainable, for, the factum of receipt of notice (Ex.D.2) dated 30.5.2003 was categorically pleaded in para 6 of the plaint. Moreover, additional plea qua non-maintainability of the suit was also taken in the written statement much less the issue in this regard was also framed. Both the courts below did not notice all the aforesaid points while granting discretionary relief. In support of his contentions, he relies on a judgment of Hon'ble Supreme Court reported as **I.S Sikandar (D) by LRs Vs. K. Subramani and others, 2013 (15) SCC 27.**

Sh. Baldev Singh Badhran, learned counsel appearing for the appellants in other two appeals submitted that the mother-Neelam Garg could not have entered into an agreement to sell without permission of the competent Court. Concededly, the permission was taken after execution of the agreement to sell and therefore the plaintiff cannot be said to be bound by the terms and condition of the agreement. Both the courts below abdicated in not appreciating the aforesaid facts, thus the findings recorded by both the courts below are not sustainable and liable to be set aside.

Per contra, learned counsel for the respondent-vendee submitted that execution of agreement to sell dated 11.9.1997 in her favour as well as receipt of earnest money on the part of defendant No.1 was admitted. Courts below rightly decreed the suit of the plaintiff/vendee and declined the relief sought by defendant Nos.2 & 3 as the defendants had not taken specific objection with regard to maintainability of the suit but had taken the usual pleas. In support, he relied on a judgment of this Court reported as **Ashok Kumar & Ors Vs. Purshottam Bansal 2018(2) Civil Court Cases 336 (P&H)**. It was next submitted that the vendee is already in possession of the suit property and carrying on business activity. On instructions from his client, stated that the plaintiff is willing to compensate the vendor owing to the fact that the agreement to sell was quite old. Moreover, Kisan Vikas Patras worth Rs.2,00,000/- i.e Rs.1,00,000/- each purchased by vendee-Sarbati Devi in the name of defendant Nos.2 & 3 had already been encashed by them which establishes the fact that the balance sale consideration deposited in the court viz-a-viz sale deed has also been withdrawn.

After hearing learned counsel for the parties and appraising the paper book, I am of the view that it is a fit case where the judgment and decrees of both the courts below are liable to be upheld, for, it would be too late to put the clock back as the factum of notice purportedly sent by the vendor for termination of the agreement to sell had been pleaded in paragraph 6 of the plaint. I can not remain unmindful of the fact that the sale deed as noticed had been executed much less possession.

The submissions of Sh. Bhadran, learned counsel for the appellants that the permission was taken after execution of the agreement to

sell and therefore the plaintiff cannot be said to be bound by the terms and condition of the agreement is not tenable as the permission had already been granted and notice was not sent by the mother but on behalf of minor children and at that time, mother had acted in pursuance to the permission granted by the Court.

Be that as it may, since the vendee has already offered to compensate the vendor, for, they have already withdrawn the balance sale consideration deposited in the court, I direct the vendee to pay a sum of Rs.5 lacs to the vendor within a period of one month from the date of receipt of certified copy of this order which has not been disputed/opposed by the counsel representing vendor.

With these observations, all the appeals are disposed of.

May 25, 2018
manoj

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No