

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

RSA No.2247 of 2016 (O&M)

Date of decision : 26.09.2018

Mewa Devi (deceased) through her LRs

...Appellant

Versus

Chidya Devi and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate for the appellant.

Mrs. Pratibha Yadav, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM No.5862-C of 2016

Application is allowed, as the deficiency in the Court fees has already been made good.

CM No.5863-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, legal heirs of deceased Mewa Devi, as mentioned in para 3 of the application are ordered to be brought on record, for the purpose of prosecuting the present appeal.

Application is allowed.

Main Case

Defendant No.2-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court.

The plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 25.05.2007 with respect to land measuring 8 kanals for a total sale consideration of ₹7,00,000/-, out of which

₹2,37,750/- was paid as earnest money.

Defendant No.1 who was the owner pleaded that her thumb impressions were taken on the pretext that the partition of the property is to be effected. Defendant No.2 pleaded that she is a bona fide purchaser of the property in dispute.

Both the Courts have concurrently found that the execution of the agreement to sell in favour of the plaintiff is proved and which is also signed by son of the proposed vendor. However, learned trial Court held that the decree for specific performance should not be granted in favour of the plaintiff on the ground that defendant No.2-appellant is bona fide purchaser. However, in the first appeal, learned First Appellate Court reversed that finding after re-appreciating the evidence. The Court found that the agreement to sell as propounded by defendant No.2-appellant is antedated as it has been typed on plain paper whereas as per the requirement of law, the agreement to sell is to be scribed on a non-judicial stamp paper. Still further, the Court has noticed that defendant Nos.1 and 2 are closely related as defendant No.1 is wife of son of elder brother-in-law of defendant No.2. Still further, the Courts have noticed that in the agreement to sell, most of the column have been filled with pen whereas the remaining agreement is typed one.

Still further, the Courts have also examined the sale deed executed in favour of defendant No.2-appellant, Ex.D3 which proves that no payment was made either at the time of the execution of the sale deed or at the time of the registration of the sale deed. It was disclosed in the sale deed that the entire payment has already been made. Taking into consideration these facts cumulatively, the Court has found that in fact defendant No.2-appellant is not a bona fide purchaser.

Learned counsel for the appellant submitted that all the three parties to this litigation are inter-related. Hence, he submitted that the finding of the First Appellate Court merely noticing the relationship between defendant Nos.1 and 2 is not correct. He further submitted that Norang has admitted the receipt of earnest money and, therefore, the finding of the Court is erroneous.

This Court has considered the submissions.

No doubt, all the three parties are closely related but here is a case where the plaintiff has proved her case by producing the Scribe as well as attesting witness to prove not only the agreement to sell but also payment of earnest money. Still further, there is no appeal by defendant No.1. The reasons noted by the learned First Appellate Court are cogent after appreciation of evidence. As far as the admission of Norang, he is only the husband of defendant No.1-proposed vendor and his admission would not enure to the benefit of defendant No.2-appellant. Still further, defendant No.2-appellant is stated to have paid a sum of ₹6,04,000/- to defendant No.1, however, no evidence has been produced to prove as to from where this amount was withdrawn creating a doubt about the genuineness of the sale transaction.

In such circumstances, this Court does not find any good ground to interfere with the findings of fact arrived at by the First Appellate Court.

Regular Second Appeal is dismissed.

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

26.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No