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

**RSA-3297-2015 (O&M)
Date of decision : 26.03.2018**

Rajesh Kumar

... Appellant(s)

Versus

Phoolwati and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kanwal Goyal, Advocate and
Ms. Khyati Goyal, Advocate
for the appellant.

Mr. Ravi Sharma, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

CM-7941-C-2015

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 201 days in filing the appeal is condoned.

RSA-3297-2015

The appellant-defendant No.2 is aggrieved of the concurrent findings of fact, whereby the suit of the respondent-plaintiff seeking specific performance of the agreement to sell dated 13.02.2003 in respect of the suit property decreed by the trial Court vide judgment and decree dated 30.08.2011 and has been affirmed by the lower Appellate Court vide judgment and decree dated 16.05.2014.

The respondent-plaintiff instituted the suit seeking specific

performance of the agreement to sell dated 13.02.2003 in respect of land measuring 39 kanals 11 marlas agreed to be for a sum of ₹50,000/- against the payment of earnest money of ₹32,000/-. The stipulated date for registration and execution of the sale deed was 12.08.2003. However, during the interregnum, Vidhya Wati-vendor, respondent No.2 herein, had allegedly entered into an agreement to sell dated 06.06.2003 with the appellant-defendant No.2, resulting into, execution of sale deed dated 05.11.2004. The aforementioned sale deed, according to the averments made in the plaint, was executed, during the pendency of the suit, which was filed on 22.09.2003. It was averred that the plaintiff had always been ready and willing to perform the part of the agreement to sell, but the defendant breached the aforementioned agreement to sell by selling the land to defendant No.2.

The defendant(s) contested the aforementioned suit by denying the fact that defendant No.1 had ever entered into agreement to sell as alleged, whereas it was defendant No.1, who had agreed to sell the land with defendant No.2, consisting of one room, kitchen, boundary wall, hand-pump and gate, for a sum of ₹68,000/-, vide agreement to sell dated 06.06.2003, resulting into, sale deed dated 05.11.2004.

The trial Court on the basis of the pleadings, framed the following issues:-

- 1. Whether the agreement dated 13.02.2003 is valid agreement and enforceable? OPP*
- 2. Whether the plaintiff is entitled for decree for possession and specific performance of agreement dated 13.02.2003? OPP*
- 3. Whether the plaintiff has come with clean hands? OPD*

4. *Whether the suit is not maintainable in the present form?*

OPD

5. *Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD*

6. *Relief*

Additional issue framed on 08.04.2010

2(a) Whether sale deed dated 5.11.2004 executed by defendant No.1 in favour of defendant No.2 is illegal, null and void not binding upon legal rights of plaintiff? OPP

In order to prove the case, the plaintiff examined herself as PW-2, Surender Dalal, Advocate as PW-1, Sunder Singh Malik as PW-3, Bhagwan Sahai as PW-4 and tendered in evidence certain documents. On the other hand, defendant No.2 examined himself as DW-2, Jagdish Chand, ARC Office, Sub Registrar Palwal as DW-1 and tendered in evidence certain documents.

On the basis of the preponderance of evidence, the trial Court decreed the suit and the appeal preferred before the lower Appellate Court also met with the same fate.

Mr. Kanwal Goyal and Ms. Khyati Goyal, learned counsel appearing on behalf of the appellant-defendant No.2 submitted that the appellant-defendant No.2 was a *bona fide* purchaser for a valuable consideration and did not know about the execution of the agreement to sell, in favour of the respondent-plaintiff as defendant No.1 did not disclose about the agreement to sell dated 13.02.2003, but sold the land for a valuable consideration. Both the Courts below, thus, have not appreciated the provisions of Section 41 of the Transfer of Property Act, much less, committed an error in observing that the plea of *bona fide* purchaser could not be accepted, when the subsequent purchaser during the pendency of the

specific performance of the agreement was bound by the decree, thus, urges this Court for setting aside the concurrent findings, under challenge.

On the contrary, Mr. Ravi Sharma, learned counsel appearing on behalf of the respondent-plaintiff submitted that the appellant-defendant No.2 is not a *bona fide* purchaser for a valuable of sale consideration as the sale deed dated 05.11.2004 was hit by *doctrine akin to lis pendens*, thus, urges this Court for upholding the concurrent findings, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Goyal, for, the agreement to sell has been proved through the testimony of PW-1 and PW-3, attesting witnesses. They categorically stated that defendant No.1 had entered into agreement to sell on account of volition and without any coercion and had taken the earnest money of ₹32,000/-. The plaintiff also marked their presence before the Registrar on the target date i.e. on 12.08.2003, therefore, the willingness and readiness has been proved. On going through the address in the memo of parties, both defendant No.1 and defendant No.2 are the resident of the same very village, whereas the plaintiff is of different village. It cannot be believed that the appellant-defendant No.2 was not having the knowledge of agreement to sell, being residing in the same area. The suit was filed on 22.09.2003 by impleading defendant No.2, but despite the sale deed on 05.11.2004 i.e. almost one year and few months was executed, thus, took a risk for purchase of the property despite the fact that the litigation was pending. Such act of the appellant-defendant No.2 cannot be said to be an act of *bona fide* and falls within the expressions of *bona fide* purchaser.

The argument of Mr. Goyal, thus, is not able to cut the ice, in

order to enable me to form a different opinion than the one arrived at by both the Courts below, much less, no substantial question of law arises for determination and accordingly, the present regular second appeal is dismissed.

26.03.2018 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No