

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

RSA No.5178 of 2016(O&M)

Date of Decision: 10.09.2018

Dalbir Kaur

.....Appellant

Versus

Joginder Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Amit Arora, Advocate for the appellant.

TEJINDER SINGH DHINDSA J.

A suit for possession by way of specific performance of agreement to sell dated 05.07.2007, filed by plaintiff Joginder Singh, was decreed by the Trial Court on 16.05.2013. Civil appeal preferred by defendant No.2, Dalbir Kaur stands dismissed in terms of judgment dated 16.02.2016, passed by the learned Additional District Judge, Tarn Taran and thereby affirming the judgment and decree passed by the Trial Court.

Resultantly, defendant/appellant Dalbir Kaur is in second appeal before this Court.

Facts in brief are that the plaintiff/respondent herein instituted the suit on the averments that on 05.07.2007, he entered into an agreement to sell with Kartar Singh/defendant No.1 in respect of land measuring 8 kanals 6 marlas at the rate of Rs.4,26,000/- per acre. A sum of Rs.51,000/-, was paid towards earnest money. The agreement to sell was duly signed and thumb marked by Kartar Singh, signed by the plaintiff in Punjabi in the presence of witnesses namely Kashmir Singh and Kulwinder Singh. The

target date for execution of the sale-deed was fixed as 15.09.2007. Since 15.09.2007 was a holiday, plaintiff/respondent is stated to have approached defendant No.1-Kartar Singh at his residence so as to tender the balance sale consideration and to get the sale-deed executed in the office of the Sub Registrar concerned on the same very day. However, Kartar Singh, refused to accept the request of the plaintiff. Thereafter, plaintiff/respondent remained present in the office of the Sub Registrar on 17.09.2007 and waited for the entire day, but defendant No.1 Kartar Singh did not come present. Accordingly, plaintiff/respondent in order to get his presence marked in the office of the Sub Registrar, got his affidavit attested from the Executive Magistrate Chohla Sahib. In the suit plaintiff/respondent even sought alternate relief of recovery of Rs.1,02,000/- i.e. double the amount of earnest money, in case he was not found entitled for possession of the suit property by way of specific performance of the agreement. It was further averred that defendant No.1-Kartar Singh, with a dishonest intention had sold the suit property vide sale-deed dated 12.09.2007 to defendant No.2-Dalbir Kaur, without consideration and who in turn is threatening to alienate the suit land to some other person.

Upon notice having been issued, defendant No.1 Kartar Singh inspite of being served did not appear and was proceeded exparte.

Defendant No.2 Dalbir Kaur/present appellant filed a written statement denying the agreement dated 05.07.2007 between the plaintiff and defendant No.1. She claimed to be a bona fide purchaser of the suit property.

As has been noticed hereinabove suit of the plaintiff was decreed in his favour and the civil appeal preferred by defendant No.2-Dalbir Kaur stands dismissed.

Counsel for the appellant has been heard at length and the case paper-book has been perused.

In the first instance, it may be noticed that the plaintiff/respondent to prove the agreement to sell dated 05.07.2007 Exhibit P-1 examined Nambardar Kashmir Singh as PW1 and who deposed in his favour and as regards due execution of the agreement to sell dated 05.07.2007. On the same lines was the deposition of the other attesting witness namely Kulwinder Singh. Plaintiff/respondent even examined Jaspal Singh PW3 who was scribe of the agreement to sell and who deposed that he had scribed the agreement to sell dated 05.07.2007 at the instance of defendant No.1-Kartar Singh qua the suit property. It would also be apposite to take note that PW1 Nambardar Kashmir Singh was also the witness to the affidavit dated 17.09.2007, which recorded the presence of the plaintiff/respondent in the office of the Sub Registrar concerned for purposes of execution of the sale-deed.

This Court finds that a concurrent view has been taken by the Courts below as regards the agreement to sell dated 05.07.2007 Exhibit P-1, having been duly entered into between the plaintiff/respondent and defendant No.1 Kartar Singh. A correct view has also been taken by the Courts below with regards to the readiness and willingness on the part of the plaintiff/respondent to perform his part of the contract.

The plea of the agreement to sell dated 05.07.2007, being not entered into or being a forged/fabricated document could have been open only to defendant No.1-Kartar Singh. He however, has chosen not to contest the suit. Be that as it may, even defendant No.2/appellant herein Dalbir Kaur, has not led any evidence as regards the agreement to sell dated 05.07.2007, having been fabricated or being a result of fraud/mis-

representation.

The Courts below have rightfully discarded the plea of the appellant herein as regards being bona fide purchaser of the suit property for a valid consideration. It has come in evidence that the appellant herein is none other than the wife of real brother of Kartar Singh. Even though in her examination-in-chief, she had stated that she had made enquiries from the office of the Sub Registrar, Chohla Sahib and from the concerned revenue patwari, pertaining to the land which was subject matter of sale-deed dated 12.09.2007 in her favour, yet in her cross examination she has admitted that she had not made any enquiry as regards the suit property except from defendant No.1-Kartar Singh, Vendor, and who had informed her that he had not executed any agreement to sell. The view taken by the Courts below as regards the appellant herein being not a bona fide purchaser is well-founded.

In view of the discussion hereinabove, this Court does not find any basis that would warrant interference in the matter. This would be more so as counsel for the appellant has very fairly conceded that even the sale-deed towards satisfaction of the decree already stands executed.

There is no merit in the appeal and the same is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

10.09.2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No