

101.

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

RSA-5978-2016 (O&M)

Date of decision:21.03.2018.

M/S BIHARI BUILDERS & INFRASTRUCTURE PVT LTD ... Appellant

Versus

MANDEEP SINGH AND ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr.K.R. Dhawan, Advocate,
for the appellant.

HARI PAL VERMA, J.

CM-15740-C-2016

Prayer in this application filed under Section 5 of Limitation Act read with Section 151 CPC is for condonation of delay of 3 days in filing the present appeal.

For the reasons stated in the application, same is allowed and the delay of 3 days in filing the present appeal is condoned.

RSA-5978-2016

Appellant-defendant No.2 has filed the present Regular Second Appeal against the judgment and decree dated 02.05.2016 passed by learned Additional District Judge, SAS Nagar, Mohali, whereby the appeal filed by appellant-defendant No.2 against the judgment and decree dated 22.07.2014 passed by learned Civil Judge (Senior Division), SAS Nagar, Mohali, was dismissed.

Vide judgment and decree dated 22.07.2014, learned Civil Judge (Senior Division) decreed the suit of the plaintiff for specific performance of agreement dated 20.02.2007 regarding the suit property and directed the respondent-plaintiff to tender the balance sale consideration to defendant No.1 (Ram Singh son of Rulda Singh) within a period of one month and on receipt of remaining sale consideration, defendant No.1 was directed to execute the sale deed in favour of plaintiff within a period of further one month. However, the sale deeds dated 10.12.2008 and 16.02.2009 as executed by defendant No.1 in favour of present appellant-defendant No.2 regarding the suit property were held to be illegal, null and void and not binding on the rights of the plaintiff.

Briefly stated, the plaintiff had filed a suit for possession as owner by way of specific performance of an agreement to sell dated 20.02.2007 and permanent injunction as regards the suit property, as detailed in the plaint. As per the plaintiff, the defendant No.1 had entered into an agreement to sell the suit property with the plaintiff on 20.02.2007 @ ₹47 lacs per acre. Defendant No.1 received ₹4 lakhs as earnest money and a receipt was executed to that effect. The sale deed was required to be executed on 31.02.2009. Thereafter, defendant No.1 received ₹4,64,100/- from the plaintiff at different times, the details of which find mention on the last page of the agreement. In this manner, a total sum of ₹8,64,100/- was paid by the plaintiff to defendant No.1. The remaining amount of ₹14,85,900/- was required to be paid to defendant No.1 by the plaintiff. In the month of August, 2009 when plaintiff noticed that defendant No.1 is trying to alienate the suit property to some other person as there was

for permanent injunction against defendant No.1 restraining him from alienating the suit property. An ex-parte stay was granted in favour of plaintiff and against defendant No.1, but still in violation of said order, defendant No.1 sold the property to defendant No.2 vide sale deeds dated 10.12.2008 and 16.02.2009. The plaintiff requested defendant No.1 to cancel the said sale deeds and to execute sale deed in his favour, but defendant No.1 was delaying the matter on one pretext or the other. The plaintiff remained ready and willing to perform his part of the contract and is still ready and willing to perform his part. When defendant No.1 failed to execute the sale deed, present suit was filed for specific performance of agreement dated 20.02.2007.

On notice having been issued, defendant No.1 appeared and took various objections including locus standi and suit is barred by Section 11 of the CPC. The execution of agreement to sell dated 20.02.2007 was denied by defendant No.1 and it was denied that defendant No.1 ever received any earnest money from the plaintiff. It was pleaded that one Manjit Singh son of Sucha Singh, resident of Village Kandala was the property dealer who approached defendant No.1 to purchase 4 kanals of land, for which defendant No.1 agreed to sell @ ₹47 lakhs per acre. The plaintiff on behalf of said Manjit Singh signed as a purchaser on the agreement, but in fact the actual buyer was Manjit Singh and not the present plaintiff Mandeep Singh. The plaintiff had just signed as an authorized person of Manjit Singh.

Similarly, defendant No.2 (present appellant) filed a separate written statement questioning the maintainability of the suit. The suit was

bad for non-joinder and mis-joinder of necessary parties. He claimed that he

is a bona fide purchaser for the consideration of suit land and therefore, his rights are protected. The suit is barred under Order 2 Rule 2 CPC. On merits, it was denied that defendant No.1 had ever entered into an agreement with the plaintiff on 20.02.2007. Defendant No.2 had purchased the suit property after due verification from the revenue record and after making enquiries which a reasonable prudent person is expected to make. Since the possession of the suit land was with defendant No.1, he delivered possession to defendant No.2. Thus defendant No.2 is a bona fide purchaser of the suit land.

The trial Court framed the following issues:-

- “1. Whether the defendant has entered into an agreement to sell with the plaintiff on 20.2.2007? OPP
- 1A. Whether defendant No.2 is bona-fide purchaser for consideration and without notice? OPD
- 1B. Whether the plaintiff is entitled to specific performance of agreement dated 20.2.2007? OPP
2. Whether the plaintiff always remained ready and willing to perform his part of contract? OPP
3. Whether the sale deeds executed by the defendant No.1 in favour of defendant No.2 dated 10.2.2008 and 16.2.2009 are illegal, null and void, if so its effect? OPP
- 3A. Whether the plaintiff is entitled to the relief of declaration? OPP
4. Whether the plaintiff is entitled to permanent injunction? OPP
5. Whether the suit is time barred? OPD
6. Whether the plaintiff has concealed the material facts from the court? OPD
7. Whether the suit of the plaintiff is barred by the principle of res judicata under Section 11 of the CPC? OPD
- 7A. Whether the suit of the plaintiff is barred under Order 2 Rule 2 CPC, if so its effects? OPD
8. Relief.”

The trial Court returned a finding of fact that connivance of defendants No.1 and 2 is established. Through defendant No.1 had admitted the execution of agreement dated 20.02.2007, but he had pleaded that he

agreed to sell the property in question to Manjit Singh whereas the plaintiff Mandeep Singh appeared on behalf of Manjit Singh as a purchaser, but this plea was not accepted.

Vide judgment and decreed dated 22.07.2014, the trial Court, decreed the suit and observed as under:-

“17. Whatsoever plea has been taken by the defendant No.1 in his written statement, the same has been adopted by the defendant No.2 and additional plea about the bonafide purchaser has been taken by the defendant No.2. So from the contents of the written statements which are filed separately by the defendants Nos.1 and 2 respectively, connivance between the defendants Nos.1 and 2 is clearly visible. The defendant No.1 has admitted the execution of agreement on 20.02.2007 but he stated that he agreed to sell the property in question to Manjit Singh and plaintiff Mandeep Singh appeared on behalf of Manjit Singh as purchaser but if the agreement in question Ex.P1 is perused which is proved by the plaintiff as well as Manjit Singh, it reveals that the defendant No.1 agreed to sell the suit property to the plaintiff only and not to Manjit Singh. Mandeep Singh himself is purchaser. Nothing favourable to the defendants has come out from the cross-examination of all the PWs. The defendant No.1 has not stepped into the witness box to substantiate his plea. It means that the defendant No.1 has admitted the claim of the plaintiff and it is proved that the defendant No.1 agreed to sell the suit property in favour of plaintiff on 20.02.2007 at the rate of Rs.47 lacs per acre and he received Rs.4 lacs as earnest money from the plaintiff and executed the receipt Ex.PW1/A in favour of the plaintiff. However the plaintiff could not prove that he paid Rs.4,64,100/- more to the defendant No.1 on different dates as there are no signatures on the writing

Ex.P2 to Ex.P4 on the last page of the agreement to sell and therefore, it is not proved that the plaintiff paid Rs.4,64,100/- as per payment from the entire sale consideration to the defendant No.1. The ownership of the defendant No.1 over the suit property is proved from the copy of the Jamabandi Ex.P5. It is an admitted fact that the defendant No.1 has transferred the suit property in favour of defendant No.2 by way of sale deeds dated 16.02.2009 and 10.12.2008. Now it is to be seen that whether the defendant No.2 is bonafide purchaser for consideration and without notice or not. It is proved that the plaintiff remained ready and willing to perform his part of the agreement and is still ready but he could not perform his remaining part of the agreement because of the execution of the sale deeds of the suit property by the defendant No.1 in favour of defendant No.2. The cross-examination of DW1 examined by the defendant No.1 is very relevant. During this cross examination, DW1 Rajnish Khanna has admitted that the defendant No.1 entered into an agreement to sell with him in August, 2008 and in October 2008. He also admitted that the plaintiff Mandeep Singh is his neighbourer and he know him being neighbourer from the very beginning and he had been passing him being neighbourer. He is an agriculturist. It is also admitted by him that Village Dharamgarh and Village Kandala are adjoining village. He also admitted that he is a developer. He also admitted that Ram Singh defendant No.1 told him about the execution of agreement to sell the suit property with Manjit Singh and not with Mandeep Singh. So even if the defendant No.1 told the defendant No.2 about the agreement to sell regarding the suit property with Manjit Singh even then the defendant No.2 should not have purchased the suit property from the defendant No.1 and

therefore, there is clear cut connivance between the defendant No.1 and 2 which is also visible from their plea taken in their separate written statements. It is also admitted by this witness that the defendant No.1 told him that he has signed the blank papers after obtaining loan from Manjit Singh. He also admitted that he verified after appearance in the suit that there was an injunction against the sale of the suit property against the defendant No.1 Ram Singh in previous suit. He also admitted that the defendant No.1 has told him a lie. So from the cross-examination of DW2, it revealed that the defendant No.2 is not bonafide purchaser for consideration and without notice. Moreover in the case law relied upon by the learned counsel for the plaintiff cited in 2008(2) Civil Court Cases 787 (P&H) titled as Bharu alias Bhura Ram Vs. Sube Singh & others, it was held that where the parties are resident of a small place, everybody knows about the sale and purchaser of property in the village and DW1 is neighbour of plaintiff Mandeep Singh and it cannot be held that the defendant no.2 was not in knowledge of sale agreement regarding the suit property in favour of plaintiff by the defendant No.1 as they are resident of a very small place. So the defendant No.1 has wrongly executed the said sale deeds of the suit property in favour of the defendant No.2 and the defendant No.2 entered into an agreement to sell the suit property with the plaintiff on 20.02.2007 and the plaintiff remained ready and willing to perform his part of the agreement and is still ready and willing to do so. The plaintiff has not concealed any material facts and therefore, the plaintiff is entitled to specific performance of the agreement dated 20.02.2007. Hence all these issues are decided in favour of the plaintiff and against the defendants.”

Aggrieved against the aforesaid judgment and decree dated 22.07.2014, present appellant-defendant No.2 had preferred an appeal. However, the same was also dismissed by the learned Lower Appellate Court vide judgment and decree dated 02.05.2016. The defence taken by defendant No.2 that he was a bona fide purchaser, was also considered and the Lower Appellate Court had observed as under:-

“16. Let us now discuss defence taken by defendant No.2 (appellant). In its written statement defence of bona-fide purchaser has been taken by pleading that before purchasing the suit land not only the revenue record was verified but prudent enquiries were also made. To affirm this defence Shri Rajnish Khanna Director of defendant No.2 came to depose as his own witness but it has rightly been observed by learned lower court that cross-examination of Rajnish Khanna speaks volumes of his connivance with defendant Ram Singh thus making out that he was not a bona-fide purchaser.

In this cross-examination defendant Rajnish Khanna disclosed that prior to getting sale deeds executed, Ram Singh apprised him about entering into sale agreement of suit land with Manjit Singh. Although he corrected himself by saying that Ram Singh had borrowed some money from Manjit Singh who obtained his signatures upon blank papers but no such averments has been taken either by Ram Singh in his written statement or by defendant No.2 in its pleadings.

If Ram Singh had apprised defendant No.2 about a prior sale agreement may be in favour of Manjit Singh, it should have put defendant No.2 on a guard making it circumspect to require more probe in the title of Ram Singh, may be by asking Ram Singh to at least produce a copy of that sale agreement. When further cross-

examined, DW Rajnish Khanna disclosed that he asked Ram Singh to produce original agreement but Ram Singh was not having an agreement with him. This answer of Ram Singh should not have satisfied Rajnish Khanna. Rajnish Khanna was candid enough to agree that though at the time of purchasing the suit land Ram Singh did not disclose him about the pending suits but when he personally verified from the court he found that Ram Singh was telling lies as he had been contesting both the suits. In his cross-examination Rajnish Khanna further agreed that plaintiff Mandeep Singh is his neighbourer and he knew him from the very beginning. He could have asked the neighbourer Mandeep Singh about entering into sale agreement of suit land but no such efforts was made.

17. Above said reply of Rajnish Khanna makes it amply clear that he knew about prior sale agreement occurring between Ram Singh and Mandeep Singh but still he went ahead with this bargain and thus he could no more claim himself to be a bona-fide purchaser. Interestingly while getting the sale deed dated 10.12.2008 executed from Ram Singh no money through cheque or drafts was paid and it was referred that a sum of Rs.1,87,500/- had been received from the company. Being a private limited company, it is uncertain how it could pay the sale price in cash to Ram Singh.

18. Learned counsel for appellant-defendant argued that merely obtaining an ex-parte injunction order does not serve any purpose unless the injunction so obtained is got incorporated in the revenue record as otherwise nobody can know whether the land under sale was encumbered or not. Learned counsel drew attention of this court towards cop of jamabandi for the year 2003-04 Ex.P5 to submit that no such remark is contained in the record about the injunction.

19. I have given a careful thought to these submissions to find that when an injunction order is passed it should have been got incorporated in the revenue record but when as per admittance of Rajnish Khanna he knew Mandeep Singh, he could have asked about the injunction order obtained by him. Mere fact that seller Ram Singh did not disclose about pendency of injunction suit in itself cannot be a reason to presume that the defendant-appellant is a bona-fide purchaser.”

It is in the aforesaid circumstances, the appellant-defendant No.2 has approached this Court, impugning the judgments and decrees passed by the courts below.

Learned counsel for the appellant has argued that the judgments and decrees passed by the courts below are arbitrary, unjust, perverse and contrary to the evidence brought on record. Apart from the fact that the suit is not maintainable, it was liable to be dismissed on account of non-joinder and mis-joinder of necessary parties. Appellant-defendant No.2 is a bona fide purchaser for a valid consideration of the suit land. Therefore, his rights are protected. Present suit is otherwise barred under Order 2 Rule 2 CPC, as earlier the respondent-plaintiff had filed a suit for permanent injunction as well. Defendant No.2 had purchased the suit property after due verification from the revenue record after making necessary enquiries which a reasonable prudent person is expected to make. On the relevant date, the suit property was in the possession of defendant No.1 and after the execution of sale deed, defendant No.2 had delivered possession to present appellant-defendant No.2, on which he had spent about ₹1 lakh. Even otherwise, plaintiff had failed to prove his readiness and willingness, nor he had proved that he had the balance sale consideration with him as on 31.02.2009 i.e. the

date fixed for execution of sale deed. It is because of non-availability of sale consideration with the plaintiff, he had waited for one year in filing of present suit. Defendant No.2 is a bona fide purchaser and was not aware about the execution of alleged agreement to sell dated 20.02.2007 between the respondent-plaintiff and respondent No.2-defendant No.1, namely, Ram Singh. Defendant No.1-Ram Singh had never told the appellant-defendant No.2 about the factum of the agreement to sell dated 20.02.2007. It is only on receipt of the summons/notice in the suit filed by respondent No.2-plaintiff, namely, Mandeep Singh, present appellant-defendant No.2 has come to the knowledge about the agreement to sell dated 20.02.2007.

I have heard learned counsel for the parties.

So far as the argument so raised by learned counsel for the appellant that the suit is barred under Order 2 Rule 2 CPC is concerned, the same is not tenable for the reason that the plaintiff has filed the suit for permanent injunction against defendant No.1 restraining him from alienating the suit property, in which ex parte stay was granted against defendant No.1, but despite there being a stay order granted by the civil court, defendant No.1 acted in violation of the order and rather sold the suit property to appellant-defendant No.2 vide two sale deeds dated 10.12.2008 and 16.02.2009. Defendant No.1 was not entitled to sell the suit property as there was already an agreement between defendant No.1 and the plaintiff regarding the suit property for which earnest money of ₹8,64,100/- was received by defendant No.1. Defendant No.1-Ram Singh had not denied about the suit filed by the plaintiff for permanent injunction and, therefore, Ram Singh was not competent to sell the suit land in favour of appellant-defendant No.2, as there was an injunction granted in favour of respondent-

plaintiff. The defence taken by appellant-defendant No.2 that he is a bona fide purchaser and before purchasing the suit property, he had not only looked into/verified the revenue record, but also made prudent enquiries, cannot be accepted. In cross-examination, DW-Rajnish Khanna had disclosed that prior to getting the sale deeds executed, defendant No.1-Ram Singh apprised him about entering into a sale agreement of suit land with Manjit Singh. Though he corrected himself by saying that Ram Singh had borrowed some money from Manjit Singh who obtained his signatures upon blank papers, but no such averments had been made either by Ram Singh in his written statement or by defendant No.2 in its pleadings. Once Ram Singh had apprised him about a prior sale agreement, it was incumbent upon the appellant-defendant No.2 to probe into the title of Ram Singh, but no such efforts were made. A mere plea of DW-Rajnish Khanna that he asked defendant No.1-Ram Singh to produce original agreement but he was not having such agreement with him, cannot be accepted. The fact that defendant No.2 and plaintiff-Mandeep Singh are neighbours and knew each other from the very beginning, the appellant-defendant No.2 could have asked from Mandeep Singh about the agreement so executed between the plaintiff and defendant No.1. But despite the aforesaid agreement still in existence, the defendant No.2 went ahead. Therefore, the findings recorded by both the courts below that he (appellant) is not a bona fide purchaser does not warrant any interference. Even otherwise, while getting the sale deed dated 10.12.2008 executed by defendant No.1 in favour of appellant-defendant No.2, money was never paid either through cheque or draft and it was referred that a sum of ₹1,87,500/- had been received from the Company.

would like to pay sale price in cash. The courts below have held that the appellant-defendant No.2 is not a bona fide purchaser for consideration. The parties were residents of small place and are usually known to each other as regards the sale and purchase of property in the village. In the case in hand, defendant being neighbour of plaintiff-Mandeep Singh, therefore, it is difficult to believe that defendant No.2 was not in the knowledge of sale agreement regarding the suit property in favour of plaintiff by defendant No.1, more specifically when they are residents of same village/place.

No substantial question of law arises in the present regular second appeal.

No other argument is raised.

There being concurrent finding of facts recorded by both the courts below, this Court does not find any reason to interfere in the well reasoned judgments and decrees of the courts below. Accordingly, present appeal is dismissed.

(HARI PAL VERMA)
JUDGE

21.03.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No