

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2322 of 2014 (O&M)

Date of Decision: 06.12.2018.

Dalip Singh

... Appellant

Versus

Nirmala and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwaljeet Singh, Advocate
for the appellant.

Mr. J.S. Nahel, Advocate
for respondent Nos.6 to 11.

ANIL KSHETARPAL J. (ORAL)

CM-16586-C-2018

Application is allowed. Legal heirs of appellant-Dalip Singh as mentioned in Para-I of the application are brought on record for the purpose of prosecuting the case.

RSA No.2322 of 2014

Plaintiff-appellant is in the Regular Second Appeal against judgments passed by the courts below declining the relief of specific performance of the agreement to sell after recording a finding that execution of the agreement to sell and payment of earnest money as also readiness and willingness on his part, stands proved. Question of law which arises for consideration whether in the facts and circumstances of the present case defendant No.2 is proved to be a bona fide purchaser for valuable consideration?

Plaintiff-appellant filed a suit for specific performance of an

agreement to sell dated 02.11.1996 through which defendant No.1 had agreed to sell 18 Kanals and 1 Marla of land for a sum of Rs.3,35,000/- out of which Rs.25,000/- was paid as earnest money. As per agreement to sell, sale deed was to be executed and registered on 30.04.1997. On which date plaintiff appeared before the Sub-Registrar but the defendant did not turn up. Hence, the plaintiff after marking his presence by securing an affidavit filed suit within 22 days, thereafter i.e. 22.05.1997. Defendant No.1 took a stand that agreement to sell is forged and fabricated and the plaintiff has not produced original agreement to sell dated 02.11.1996. Defendant No.1 further pleaded that he has sold the property vide sale deed dated 30.12.1996 pursuant to an agreement to sell dated 05.09.1996 in favour of defendant No.2 with respect to land measuring 15 kanals and 15 marlas.

Learned trial court on appreciation of evidence dismissed the suit after noticing that PW2-Dalip Singh did not appear for further cross-examination and there were interpolation in the register of the scribe as three entries have been entered at serial No.632.

It will be noted that alleged agreement to sell in favour of defendant No.2 dated 05.09.1996 is entered at serial No.632, which is also serial number assigned to two other documents.

During the pendency of the appeal application for additional evidence was moved by the plaintiff in order to complete the examination of Dalip Singh PW-2. The application was allowed. Dalip Singh was appeared in evidence. However, counsel appearing for the respondents did not appear and therefore, further cross-examination of the Dalip Singh was treated as nil.

Learned first appellate court after reappreciating evidence found that execution of the agreement to sell dated 02.11.1996 is proved on file and

payment of the earnest money is also proved. The Court further recorded a finding that plaintiff was ready and willing to perform his part of contract.

Learned first appellate court has still granted alternative relief to the plaintiff on the ground that defendant No.2 is a bona fide purchaser and plaintiff has failed to prove that he has informed defendant No.2 about the agreement to sell as pleaded by him.

As regards the plea of defendant No.2 with regard to prior agreement to sell in his favour dated 05.09.1996, the register of the scribe has come on record and it is apparent that three entries at Sr. No.632. Attention of the court has not been drawn to any other two or more entries which has been assigned same number. Still further sale deed executed in favour of defendant No.2 does not make a reference to a previous agreement to sell dated 05.09.1996. The first appellate court has also over looked the fact that defendant No.2 and defendant No.1 are residents of the same village, whereas the plaintiff is residing in a different village. Plaintiff in his statement has positively stated that he had informed defendant No.2 about agreement to sell in his favour. It may be noted that once the prior agreement to sell in favour of defendant No.2 becomes doubtful, the first appellate court was wrong in declining the relief of specific performance of the agreement to sell. It may be noted that once the land in the village is agreed to be sold, the entire village knows about the transaction and defendant Nos.1 and 2 being residents of the same village were in knowledge of the agreement to sell. It is apparent that defendant Nos.1 and 2 had in fact joined hands and wanted to defeat the rights of the plaintiff.

Still further the sale deed in favour of defendant No.2 dated 30.12.1996 proves that sale was for total consideration of Rs.2 lakhs which is

not in consonance with the agreement to sell set up by defendant No.2. As per agreement of sell dated 05.09.1996 total sale consideration of Rs.4 lakhs was fixed out of which Rs.2,14,000/- was paid as earnest money. Firstly, the sale deed does not refer to the agreement to sell or the payment of the earnest money. Secondly, the total sale consideration mentioned is Rs.2 lakhs which is alleged to have been paid before the Sub-Registrar.

Keeping in view the aforesaid facts defendant No.2 is not proved to be a bona fide purchaser, hence, question framed earlier is answered in favour of appellant.

Hence, the judgment passed by the courts below are set aside. A decree for specific performance of agreement to sell dated 02.11.1996 is passed on deposit of the remaining amount along with interest @ 10% per annum from the date of institution of the suit till deposit in the executing Court.

Appeal is allowed.

06.12.2018
rekha sharma

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*