

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

103

RSA-722-2016 (O&M)

Date of Decision : 13.09.2018

Smt. Roshni Devi

..... Appellant

Versus

Surender Pal Beniwal and Another

.... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Sumeet Mahajan, Sr. Advocate
with Mr. Deepender Singh, Advocate
for the appellant.

Mr. Vijay Jindal, Sr. Advocate with
Mr. Akshay Jindal, Advocate,
Ms. Priyanka Dalal, Advocate,
Ms. Janya Sirohi, Advocate &
Mr. Gopal Soni, Advocate
for the respondent No.1.

None for respondent No.2.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the judgment of the lower appellate court modifying decision of the trial court and decreeing the suit for specific performance written agreement to sell dated 23.01.2006.

The respondent No.1 had filed a suit against respondent No.2 for specific performance of the said agreement to sell land measuring 2 kanal 16 marlas comprised in Khasra No.18/23/2. Admittedly, after the suit was filed the respondent No.2 sold the land to the appellant. The plea taken

by the respondent No.2 and the appellant was that the agreement to sell in favour of respondent No.1 was a result of fraud. Additionally, the case of the appellant was that she was a bonafide purchaser. Both the courts below have found as a fact that the agreement to sell was proved on the touchstone of preponderance of probability. The trial court, however, held that the appellant was a bonafide purchaser and ordered recovery of double the amount of earnest money from the respondent No.1. In appeal, the lower appellate court modified the decision as mentioned above and decreed the suit for specific performance holding that the plea of bonafide purchaser was not available to the appellant since her purchase was hit by the doctrine of lis pendens and that is why the appellant is before this Court.

Learned senior counsel for the appellant has argued that actually the respondent No.2 owned 2 kanal 16 marlas of land comprised in Khasra No.18/23/3 and his client had purchased that land from the respondent No.2 but the agreement to sell in favour of the respondent No.1 was from Khasra No.18/23/2 and therefore it could not be held that the suit land 'was the same' and the principle of lis pendens was wrongly applied.

On 11.07.2018 this Court had passed the following order:-

“Learned counsel for appellant refers to the agreement to sell (Ex.P2) and sale deed (Ex.P-4) to contend, inter alia, that plaintiff sought to purchase the land measuring 2 K – 16 M out of Khasra No.18/23/2 whereas the land purchased by the appellant from defendant No.1 was forming part of Khasra No.18/23/3. Despite having taken a specific assertion in this regard by the appellant in his written statement, plaintiff did not file any replication because of which, no issue was framed in this regard and the learned trial court rightly declined the relief of specific performance of the agreement to sell to the

plaintiff, granting him only alternative relief of recovery of earnest money and appellant was not aggrieved towards the said relief, as the issue of earnest money was between the plaintiff and defendant No.1. However, on the first appeal, having been filed by the plaintiff, learned first appellate court fell in serious error of law, while setting aside the sale deed in favour of the appellant without there being any pleading, issue or evidence in this regard, thereby causing serious prejudice to the appellant.

Notice of motion for 11-1-2018.

In the meantime, execution of the impugned decree shall remain stayed.”

Today, the learned senior counsel appearing on behalf of the respondent No.1 has shown to the Court the written statement filed by the appellant. Contrary to the assertion made in the preliminary hearing, I find that the appellant never disputed the identity of the land. At two places in the written statement the appellant had mentioned the expression 'suit land'.

Learned senior counsel for the appellant has countered by arguing that this mistake had occurred because this was reflected in the judgment.

Both the courts below have considered the defense and held that the agreement to sell propounded by the respondent No.1 was actually in respect of the land comprised in Khasra No.18/23/3 and have come to the conclusion that the wrong mention of khasra number was a typographical error because the respondent No.2 did not possess any land in Khasra No.18/23/2. As a matter of fact, a perusal of the written statement filed by the appellant also reveals that it must have been a typographical error because as far as the mind of the parties was concerned, there was no doubt

appellant had mentioned the expression 'suit land'. At that time also, the appellant knew that she had purchased the land in Khasra No.18/23/3. Had this fact been averred, the respondent No.1 could have moved an application for amendment but, as mentioned above, at least in the mind of the parties there was no doubt about the identity of the property in dispute.

In the circumstances, the lower appellate court has rightly held that the appellant had purchased the land in respect of which the suit was pending and declined to consider the plea of bonafide purchase.

Learned senior counsel for the appellant has sought assistance from Section 20 of the Contract Act, 1872 (*hereinafter referred to as 'the Act'*). Section 20 of the Act is as under:-

“20. Agreement void where both parties are under mistake as to matter of fact – Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation – An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact.”

It would also be productive to reproduce the illustrations of Section 20 of the Act:-

“ ***Illustrations***

(a) *A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the date of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The agreement is void.*

(b) *A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.*

(c) *A, being entitled to an estate for the life of B, agrees to*

sell it to C, B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.”

A perusal of Section 20 of the Act and the illustrations reveal that a mistake which may render a contract void is on a different plane than the mistake in the present case. Here what readily comes to mind is if a person by mistake agrees to sell the property of somebody else; that would be a mistake which covers by Section 20 of the Act. But a mistake where in a agreement to sell the number of khasra number has been wrongly mentioned like in the present case where 18/23/2 has been mentioned instead of 18/23/3, in my opinion, would not be such a mistake that can attract Section 20 of the Act.

Consequently, I find no fault with the findings of the lower appellate court. Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

September 13, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No