

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

RSA No.1045 of 2017 (O&M)

Date of decision:07.12.2018

Kishan Chand Mariya (now deceased) through LRs ... Appellant

Vs.

Hardyal Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Mandeep Singh Sachdev, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.2372-C of 2017

The application is allowed, subject to all just exceptions. Legal representatives of Kishan Chand Mariya - appellant as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

RSA No.1045 of 2017 (O&M)

The appellant-plaintiff has not been successful in getting the discretionary relief claimed in the suit for specific performance of the agreement to sell dated 27.02.2003 confined to the alternative relief for recovery of earnest money with interest @ 12% per annum.

The plaintiff sought the specific performance of the agreement to sell on the premise that defendants had agreed to sell the land for a total sale consideration of Rs.15 lakhs and a sum of Rs.5 lakhs was paid as

earnest money. The stipulated date for execution and registration of the sale deed was 01.08.2004 which was a holiday, thus, the plaintiff marked his presence on 02.08.2004 alongwith balance sale consideration and necessary charges for the registration and stamp papers. The agreement to sell imposed a condition upon the defendants to obtain the mutation and in the absence of the same, plaintiff did not file the suit and kept on waiting for performance. However, during the subsistence of the agreement to sell, defendant no.1, vide sale deeds dated 9.6.2006 and 19.06.2006 sold the land, subject matter of the agreement to sell, to defendant nos.2 and 3, therefore, there was breach and suit was filed on 01.09.2006.

Mr. M.S.Sachdev, learned counsel appearing on behalf of the appellant-plaintiff submitted that both the Courts below have committed illegality and perversity in not granting the discretionary relief as defendant no.1 after filing written statement did not contest the suit. No doubt, the subsequent vendee can take up the plea which the original vendor can, on acquisition of right and title. The aforementioned sale deeds were executed by the attorney and not by defendant no.1, therefore, cannot be permitted to take the plea of bonafide purchaser. The plaintiff was prevented to file the suit immediately after expiry of the target date as the defendants failed to obtain the mutation. There is a categoric averment in the plaint with regard to readiness and willingness, therefore, compliance of provisions of Section 16(c) of Specific Relief Act, 1963, has been proved to the hilt.

I have heard the learned counsel for the appellant-plaintiff and appraised the judgments and decrees of the Courts below.

A copy of the plaint shown during the course of hearing did not reveal that under what circumstances, the plaintiff had been approaching the defendants. It is settled law that mutation does not confer the title. No explanation has come forth for not filing the suit immediately after marking the presence before the office of Sub Registrar or few months thereafter and allowed the creation of third party rights after two years. Even the sale deeds have not been challenged. The argument of Mr. Sachdev that defendants have not been able to prove the status of bonafide purchasers, is without merit.

The present appeal cannot be brought within the realm of illegality and perversity enabling this Court to form a different opinion than the one arrived at by both the Courts below.

No substantial question of law arises for adjudication of the present appeal.

The appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 07, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No