

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

111

RSA No.1098 of 2017 (O & M)
Date of Decision:13.07.2018

Ranjit Singh and another

...Appellants

Versus

Avtar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Singh, Advocate
for the appellants.

ANIL KSHETARPAL, J.(Oral)

Defendants No.3 and 4 are in the regular second appeal against concurrent judgments passed by the Courts below.

Learned trial Court after recording a finding that agreement to sell is proved, refused to grant specific performance only on the ground that defendants No.3 and 4-appellants are bona fide purchasers.

Learned First Appellate Court after re-analyzing the evidence recorded three reasons to reverse the finding of the learned trial Court with respect to being bona fide purchasers. The finding arrived at by the learned First Appellate Court and reasons assigned therein extracted as under:-

“Firstly, all such defendants have taken false stand in their pleadings that plaintiff was present at the time of any such negotiations of sale deed to be executed in favour of defendants No. 3 and 4 mainly because it

has already been concluded that defendants No. 1 and 2 has executed an agreement to sell in favour of plaintiff and earnest money was also paid in favour of defendants No. 1 and 2 and in that eventuality, any such negotiations could not be done in the presence of plaintiff and in case such things happened actually, then plaintiff would have agitated the matter at spot as the agreement had already been executed in his favour. However, no such thing happened as defendant Ranjit Singh while appearing as DW1 although disclosed in his affidavit regarding such negotiations in his house in the presence of plaintiff relating to sale deed, but he is in cross examination specifically uttered that at the time of talk for sale of suit land in his house, only defendants No. 1 and 2 and his brother apart from himself were present and none else was present at spot at that time. That aspect shows that all the defendants have connived with each other and they had taken false plea regarding presence of plaintiff at the time of alleged negotiations regarding sale deed to be executed in favour of defendants No 3 and 4 and further defendants have not come to the court with clean hands and in order to defeat the rights of plaintiffs, such defendants No.1 and 2 executed the sale deed qua part of suit land in favour of defendants No.3 and 4. There is another angle from which it can be said that defendants No. 3 and 4 are not

the bonafide purchaser as DW1 Ranjit Singh in his cross-examination also uttered that boundaries of village Chawhry Majra and Duladi touched each other. In fact parties to suit are residing in these two villages. In that way, it is highly improbable that defendants No.3 and 4 were not having knowledge of execution of that agreement to sell by defendants No. 1 and 2 in favour of plaintiffs. Above all, there is no cogent evidence from the side of defendants regarding passing of consideration against sale deed from defendants No. 3 and 4 in favour of defendants No. 1 and 2 except for mere mention in the sale deed.”

This Court has heard learned counsel for the appellants at length. It is not disputed before this Court that the appellants belong to village Choudhri Majra, which has a common boundary with Duladi. Although, learned counsel for the appellants has submitted that presently the appellants are residing in Nabha, however, it is not disputed that family of the defendants belongs to that place and certain family members are residing therein.

Still further, in the present case, no payment was made before the Sub Registrar. Defendants-appellants have not produced any evidence to prove that any payment was made under sale deed dated 10.05.2005.

Plaintiff has a right to get appropriate relief once both the Courts have found that the agreement to sell is in his favour is prior in point of time and he was ready and willing to perform his part of the contract. The discretion or reasoning assigned by the learned First Appellate Court are

neither shown to be perverse nor erroneous.

Hence, this Court does not find any good ground to interfere with the findings of the learned First Appellate Court.

Regular second appeal is dismissed.

All the miscellaneous applications, if any, are disposed of, in view of the above said judgment.

13.07.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

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