

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

**RSA No.1973 of 2017 (O&M)
Date of Decision.29.08.2018**

Mukhtiar Singh

.....Appellant

Vs

Dalbir Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vipin Mahajan, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court whereby the suit for possession by specific performance of the agreement to sell dated 28.12.2004 executed by defendant No.1 in favour of the plaintiff has been dismissed, in essence, judgment and decree of the trial Court decreeing the suit, has been set aside.

The appellant-plaintiff instituted the suit claiming specific performance on the premise that Rattan Singh, vendor of the land had agreed to sell the land in dispute to the appellant-plaintiff for valuable consideration @₹3,85,000/- per acre against receipt of earnest money of ₹50,000/-. The stipulated date for registration and execution of the sale deed was fixed as 28.04.2005. Defendant No.1 during the subsistence of agreement to sell had sold the property in dispute vide sale deed dated 27.07.2006, therefore, cause of action accrued for filing suit on 23.02.2008.

Defendant No.1 was proceeded ex parte whereas

defendant Nos.2 and 3 contested the suit and stated that the agreement to sell dated 28.12.2004 was null and void and fabricated. They purchased the property by virtue of sale deed 27.07.2006 on the basis of receipt dated 05.01.2004 whereby a sum of ₹52,000/- was paid against the total sale consideration of ₹5,52,000/-.

Since the parties were at variance, the trial Court framed the following issues:-

“(i) Whether the plaintiff is entitled for the possession by specific performance of agreement to sell dated 28.12.2004? OPP

(ii) Whether the plaintiff is entitled for the recovery of Rs.1.00 lac in the alternative as prayed for? OPP

(iii) Whether the defendants are bona fide purchasers for value with consideration and without any notice of the agreement to sell dated 28.12.2004? OPD

(iv) Relief.”

The plaintiff in support of his case, examined PW1 Kulwant, himself as PW2 and PW3 Sandeep Kumar and tendered documents Ex.P1 agreement to sell, Ex.P2 Affidavit and Ex.P3 certified copies of jamabandi for the year 2002-2003.

On the other hand, defendants examined as many as three witnesses and brought on record Ex.D1 to D11 i.e. passbooks, much less, receipt dated 05.01.2004.

The trial Court after noticing pleadings and evidence found that the plaintiff had been ready and willing to perform his part of the agreement and decreed the suit, in essence, belied the stand of

defendants. However, in appeal laid by defendant No.2 and 3, as noticed above, the lower Appellate Court reversed the finding of the trial Court and dismissed the suit.

Mr. Vipin Mahajan, learned counsel appearing on behalf of the appellant-plaintiff submitted that the finding of the lower Appellate Court suffers from gross illegality and perversity as the lower Appellate Court has abdicated and misdirected in not appreciating contents of sale deed, which does not reflect Ex.D1, receipt, by which a sum of ₹52,000/- purported to have been paid to the vendor. In these circumstances, the defendants have miserably failed to prove that they had paid a sum of ₹52,000/- prior to the agreement to sell in question. The lower Appellate Court had upheld the finding of readiness and willingness as rendered by the trial Court in favour of the plaintiff, thus, there was no occasion for setting aside the judgment and decree of the trial Court.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Mahajan. Concededly, the sale deed executed by defendant No.1 is dated 27.07.2006 but the plaintiff still remained silent and woke up from the slumber by filing suit on 28.02.2008 i.e. almost close to expiry of two years. No doubt, the lower Appellate Court has also upheld the finding on issue qua readiness and willingness but I cannot remain unmindful of the fact that third party rights have been crystallized into sale deed. In my view, defendants have not been able to prove right in the property by virtue of receipt dated 5.1.2004 i.e. almost 11 months before the agreement in

question. In these circumstances, the sale deed executed on 27.07.2006 cannot be set aside as the suit was filed on 23.02.2008. The appellant-plaintiff has already been granted refund of earnest money of ₹50,000/- along with interest.

In view of the aforementioned, I do not find any illegality and perversity in the judgment and decree passed by the lower Appellate Court, much less, no substantial question of law arises for consideration by this Hon'ble Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 29, 2018
Pankaj*

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No