IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1772 of 2018(O&M)
Date of Decision-02.08.2018

Mohinder Singh ... Appellant

Versus

Sher Singh and another ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.S. Sekhon, Advocate
for the appellant.

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RAJ MOHAN SINGH, J.

CM No.4822-C of 2018

For the reasons mentioned in the application, the same is allowed.

Appellant is allowed to make good the deficiency in Court fee.

Main case

[1]. Defendant No.2 is in regular second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for specific performance, permanent injunction and declaration.

[2]. Plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 15.02.2011 whereby defendant No.1 agreed to sell the suit land measuring 4 kanals 3 marlas situated in different villages. The total sale consideration was fixed as Rs.3,10,000/- out of which Rs.2,50,000/- was paid

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as earnest money. The target date for execution of sale deed was fixed on or before 23.09.2011. Defendant No.1 did not honour the agreement to sell, rather executed sale deed dated 24.08.2011 in favour of defendant No.2. In this way, plaintiff has also challenged the sale deed by way of declaration. Alternative prayer was made for recovery of the amount and defendants were sought to be restrained from alienating the suit property.

[3]. The suit was not contested by defendant No.1 and therefore, he was proceeded against *ex parte* vide order dated 22.11.2011 passed by the trial Court. Defendant No.2 contested the suit. Sale deed dated 24.08.2011 was claimed to be valid and he claimed himself to be *bona fide* purchaser for valuable consideration. At the time of purchase, defendant No.1 was the owner of the suit land and he made all the inquiries regarding clear title of defendant No.2 in the revenue record. Agreement to sell was claimed to be *ante* dated, without consideration and forged.

[4]. After completion of pleadings, both the parties went to trial. Plaintiff got examined himself as PW 1, Harbans Singh, attesting witness examined as PW 2 and scribe of the agreement namely Sham Lal Handa was examined as PW 4. Defendant No.2 got examined himself as DW 1 besides examining Jarnail Singh, Lambardar as DW 2 and Bakhshish Singh, Advocate (scribe) as DW 3.

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[5]. Trial Court decreed the suit of the plaintiff and the said judgment and decree was upheld by the Lower Appellate Court.

[6]. Defendant No.2 is the nephew of defendant No.1 and was having cordial relations with defendant No.1. Plaintiff himself appeared as PW 1 and proved the *jamabandi* Ex.P1 and other documents. Harbans Singh, attesting witness of the agreement to sell was examined as PW 2 who had proved due execution of agreement to sell dated 15.02.2011 and Ex.P3 i.e receipt of payment of Rs.2,50,000/- as earnest money. The witness was attesting witness to the receipt Ex.P3 as well. The scribe of the agreement was examined as PW 4 who has also deposed in the context of proving the agreement to sell. According to the testimony of aforesaid witness, it came on record that after scribing the evidence, the witness explained its contents to the parties and parties after hearing the same, admitted the contents of the agreement to be true, put their respective signatures on the agreement in the presence of the witnesses. The attesting witnesses Harbans Singh and Karnail Singh also put their respective signatures on the agreement in the presence of the parties. The consideration was duly fixed and earnest money was duly paid over to defendant No.1 Bachan Singh in the presence of the witnesses. The scribe identified his seal and signature Ex.PW 4/A on the agreement Ex.P3. No evidence was led by defendant No.1 being *ex parte* against execution of the agreement to sell. Defendant No.2 was not privy to agreement to

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sell. In view of no evidence on the part of defendant No.1, execution of agreement was duly proved with reference to testimonies of Harbans Singh and Sham Lal Handa.

[7]. The findings recorded under issue No.1 in respect of execution of agreement to sell could not be refuted by the defendants by way of any plausible explanation and evidence. Issue No.5 was in respect of plea of defendant No.2 to be a *bona fide* purchaser. The onus to prove this issue was on defendant No.2. Issue No.2 was depending upon issue No.5. Defendant No.2 claimed himself to be a *bona fide* purchaser on the ground that he had made due inquiries from the revenue record and from the office of Sub Registrar in respect of clear title of land in question. Defendant No.2 has purchased the land from defendant No.1. Defendant No.2 while appearing as DW 1 has admitted that he and defendant No.1 are residents of same village. Defendant No.1 is real uncle of defendant No.2. They were having cordial relations. Being residents of the same village, it could not be presumed that defendant No.2 was not having any knowledge in respect of previous agreement to sell executed by defendant No.1 in favour of the plaintiff. Defendant No.1 has not disputed the genuineness of agreement to sell dated 15.02.2011. Defendant No.2 possibly could not dispute the bilateral obligation between defendant No.1 and the plaintiff. Defendant No.2 was a vendee *lis pendens* and the case was hit by Order 21 Rule 102 CPC. The factum of prior knowledge of agreement to sell was

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proved by way of inescapable conclusion drawn by the Courts below on the basis of material on record. Even as per Section 19(a) and (b) of the Specific Relief Act, specific performance can be enforced against a person who has acquired the title subsequent to the agreement to sell especially when his case does not fall under any exception in terms of Section 20 of the Specific Relief Act. Since the execution of agreement to sell was proved on record and defendant No.2 had the knowledge about the existence of prior agreement to sell, therefore, specific performance of the contract can be enforced against defendant No.2 as the transferee would not acquire any right better than the right possessed by the vendor. He will only succeed the liability of his vendor. Defendant No.2 cannot be held to be a *bona fide* purchaser for valuable consideration or without notice of existence of prior agreement to sell in favour of the plaintiff. Issue No.5 was rightly decided against defendant No.2. The subsequent vendee cannot question the readiness and willingness of the plaintiff to perform his part of obligation. The plea of readiness and willingness is a relatable issue to the agreement to sell. After execution of sale deed, the question of readiness and willingness is not relevant, rather the question to be adjudicated would be whether the purchaser was a *bona fide* purchaser for valuable consideration without notice of existence of prior agreement to sell.

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[8]. Both the Courts below have decided all the issues in an appropriate manner. Issues No.3 and 4 were correctly decided. The findings of fact recorded by the Courts below cannot be faulted on any of the consideration. The appreciation is based on material on record and the same has not been found to be the result of misreading of evidence in any manner. The findings recorded by the Courts below are not found to be perversed by any stretch of imagination. No law point worth consideration is involved in the present appeal and the same is accordingly dismissed in *limini*.

[9]. Since the main appeal has been dismissed on merits, therefore, pending applications for condonation of delay in filing and re-filing the appeal are not necessary to be decided and the same are accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

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Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No

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