

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

RSA-4660-2018 (O&M)
Date of Decision: 08.08.2018

Seema and anotherAppellants

Versus

Dinesh Kumar and anotherRespondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Pawan Gaur, Advocate
for the appellants.
Mr. Kunal Mulwani, Advocate and
Mr. Aditya Sanghi, Advocate
for the caveator/respondent No.1.

DEEPAK SIBAL, J. (ORAL)

Respondent No.1 filed a suit seeking therein specific performance of agreement to sell dated 03.04.2008 which according to him had been executed between him and respondent No.2. In response to the notice issued in the suit, respondent No.2 appeared and filed her written statement denying the aforesaid agreement. It was further the case set up by respondent No.2 that the agreement to sell dated 03.04.2008 on the basis of which respondent No.1 had filed the suit was a forged and fabricated document and therefore, no reliance on the same could be placed. The appellants who were defendants No.2 and 3 also appeared before the Trial Court and sought dismissal of the suit on the ground that the property which was the subject matter of the suit, on 29.01.2008, had been agreed to be sold by respondent No.1 to them and in pursuance of such agreement a sale deed dated 02.06.2008 had also been executed. For the afore stated reasons as also on the ground that the appellants/defendants No.2 and 3 were *bonafide* purchasers, they sought dismissal of respondent

No.1's suit.

The Trial Court after sifting the evidence led by the parties and after considering the submissions made by their respective counsel, decreed respondent No.1's suit. The appellants challenged such decree before the Additional District Judge, Palwal (for short 'the Appellate Court') which appeal was considered and rejected leading to the filing of the present second appeal.

Learned counsel for the appellants submitted that both the Trial Court as also the Appellate Court had erred in decreeing respondent No.1's suit. According to him both the Courts had misread the stamp paper, on which was written the agreement to sell in question, as also the statement of the stamp vendor PW-2 K.C. Sharma, to the effect that the stamp paper had been purchased by respondent No.2-Suman Lata Sharma as a perusal of the stamp paper clearly revealed that the same had been purchased by Santosh Devi, mother of respondent No.1-Dinesh Kumar. He further submitted that the sale deed dated 02.06.2008 executed between respondent No.2 on one hand and the appellants on the other, had not been challenged by respondent No.1 and in the absence of such challenge respondent No.1 was not entitled to the relief of specific performance. Lastly, it was submitted that once respondent No.2 had denied the execution of the agreement to sell dated 03.04.2008 which formed the basis of the filing of the suit by respondent No.1, the relief prayed for by respondent No.1 could and should had not been granted as respondent No.1 had failed to prove execution of the afore agreement to sell.

The afore submissions made by learned counsel for the

appellants have been considered but no merit in the same is found.

The stamp paper, on which was written the agreement to sell in question, was produced by learned counsel for the appellants. On its perusal, on the back side of this document, at the top, are found the name/signatures of respondent No.2-Suman Lata Sharma. Thus, it is not difficult to conclude that the stamp paper was in fact purchased by her. Near her signatures is also found the name of Santosh Devi, mother of respondent No.1 but that in no manner would cause any dent in the case of respondent No.1 as it is common to find on the stamp paper, names of both the parties to the proposed agreement for whom the stamp paper is being purchased. Nonetheless, once the name/signatures of respondent No.2-Suman Lata Sharma, as purchaser of the stamp paper, is found on the stamp paper, the first argument by learned counsel for the appellants warrants rejection.

Further, PW-2 K.C. Sharma, stamp vendor proved the fact of sale of the stamp paper to respondent No.1. The discrepancies in his statement regarding proper maintenance of his record are found to be minor which would not make his deposition doubtful. PW-3 U.C. Kaushik who was the deed writer and PW4 Om Chand further went on to prove the execution of the agreement to sell dated 03.04.2008.

In her written statement, respondent No.2 had denied that she had ever entered into any agreement with respondent No.1. However, both the Trial Court as also the Appellate Court, after referring to the admission made by respondent No.2 with regard to her signatures on the agreement to sell dated 03.04.2008 as also her inability to prove her allegations with

regard to forgery and fabrication of such document, have returned concurrent findings of fact that the agreement to sell dated 03.04.2008 was entered into between respondent No.2 and respondent No.1. No perversity is shown in these findings warranting any interference.

The sale deed dated 02.06.2008 entered into between the appellants and respondent No.2 having not been challenged by respondent No.1 would also make no difference as the agreement to sell between respondent No.2 and respondent No.1 on the basis of which respondent No.1's suit has been decreed is dated 03.04.2008 which is much prior to the alleged sale deed entered into between the appellants and respondent No.2. Even otherwise, both the Trial Court as also the Appellate Court have concurrently found the appellants not to be *bonafide* purchasers and the agreement to sell dated 03.04.2008 entered into between respondent No.2 and respondent No.1 to be a valid and legal document. Once the agreement dated 03.04.2008 has been found to be a valid and legally enforceable document, then the same has to be enforced in favour of respondent No.1 and all documents, which would include the aforesaid sale deed dated 02.06.2008, which would cause any impediment in the enforceability thereof, would have to make way for the same especially, in view of the following contradictions found by the Trial Court in the story of the appellants regarding agreement dated 29.01.2008 and sale deed dated 02.06.2008 between the appellants and respondent No.2 as also the doubts expressed by it with regard to the appellants' intentions:-

“A perusal of the sale deed dated 02.06.2008 Ex.DW1/A reveals that the defendant No.1 sold the suit land to defendants No.2 and 3 for a total sale consideration of Rs.3,15,000/-,

whereas a perusal of the agreement to sell dated 29.01.2008 Ex.DW3/A clearly reveals that the total sale consideration for the sale of the suit land was fixed for Rs.6,00,000/- and it is also written in the agreement that the defendant No.1 has taken an earnest money of Rs.4,00,000/- on 29.01.2008. Both the documents and transactions i.e. Ex.DW1/A & Ex.DW3/A appears to be contradictory of each other.

Further DW6 in her cross-examination has deposed that she does not know as to whether any payment was made to the defendant No.1 at the time of the execution of the sale deed. Further a perusal of the sale deed dated 02.06.2008 reveals that there is no mention regarding the fact that whether any amount has been paid in front of the Sub-Registrar. A perusal of both these documents clearly reveals that contents of both these documents are contradictory and it raises serious doubt on the defendants version.

23. Moreover the fact that the defendant No.1 executed a sale deed on 02.06.2008 with defendants No.2 and 3, just before 03.06.2008 i.e. the fixed for execution of sale deed with the plaintiff raises serious doubt over the bonafide intentions of the defendant. On the other hand the defendant No.1 has clearly admitted in her cross-examination that she has seen the agreement Ex.P1 and receipt Ex.P2 and the same bears her signature. She has also admitted that she took Rs.2,00,000/- from the plaintiff. The plea of loan taken by the defendant No.1 is a mere assertion and nothing substantial to corroborate it has been placed on record.”

To the same effect are the following observations by the

Appellate Court:-

16. “Now coming to the claim of defendants No.2 and 3/appellants that they are bonafide purchasers for consideration and without notice, it can be observed from the material on record that defendant No.1 has come up with a

case she borrowed money for the marriage of her children. Agreement in favour of plaintiff stands proved. Agreement with the plaintiff was for a sum of Rs.8.00 lacs out of which Rs.2.00 lac was paid as part money. Defendants No.2 and 3 by virtue of agreement Ex.DW3/A claimed that the suit property was agreed to be sold for a sum of Rs.6.00 lacs and Rs.4.00 lacs were received by defendant No.1 and Rs.2.00 lacs were to be paid. Subsequently, at the time of execution sale deed on 29.08.2008. The sale deed in favour of defendants No.2 and 3, copy of which is Ex.DW4/A, however, shows that suit property was shown to be sold for Rs.3.15 lacs only and part of the amount was shown to be previously paid and before Sub Registrar, no payment of consideration took place. Thus, there is apparent discrepancy between the agreement Ex.DW3/A and the sale deed Ex.DW1/a with regard to agreed sale consideration and the mode of payment. In fact, in the sale deed there was no mention of the agreement dated 29.01.2008.

17. *It can be prudently observed that after agreeing to sell property to the defendant No.1 for Rs.8.00 lacs, defendant No.1 has sold the property to defendants No.2 and 3 for mere Rs.3.15 lacs and so it appears to be an attempt on the part of defendants No.2 and 3 to purchase property under valued and that can be for the reasons that they considered it to be a disputed property. So their intention cannot be considered to be that of a bonafide purchaser. In all likelihood after the dispute between the plaintiff and defendant No.1, defendants No.2 and 3 came in the picture and purchased the property from defendant No.1 who was in need of money.*

18. *In the aforesaid circumstances, plea of bonafide purchaser of defendants No.2 and 3 cannot be sustained. That being so, there is no infirmity in the finding of learned lower court. Learned counsel for the appellants has raised*

argument that no specific issue of bonafide purchaser of defendants No.2 and .3 was made and there was no issue with regard to fraudulent agreement between defendant No.1 and defendants No.2 and 3. On this ground, the appellants cannot succeed before this Court because parties have led evidence understanding the case as well and in fact, a very comprehensive issue was framed by learned lower court as issue No.1 on the basis of relief sought in the plaint and that covered all the issues of fact on the basis of which cause of action was claimed by the plaintiff and denied by the defendants which included claim of collusion between plaintiff and defendant No.1 and plea of bonafide purchaser of defendants No.2 and 3”

In view of the above, the concurrent findings of fact returned by the Trial Court as also the Appellate Court warrant no interference.

No question of law much less any substantial question of law is found to arise in the present second appeal.

Dismissed.

(DEEPAK SIBAL)
JUDGE

08.08.2018

Neha

Whether Speaking/Reportable : Yes/No

Whether Reportable : Yes/No