

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

**RSA No.885 of 2017 (O&M)
Date of Order: 13.11.2018**

Gurmeet Singh and another

..Appellants

Versus

Karamjit Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jhanji, Advocate,
for the appellants.

Mr. Rajesh Sethi, Advocate,
Mr. Arun Biriwal, Advocate
Mr. Tushar Gera, Advocate,
Ms. Varinder Kaur Warriach, Advocate
for respondent no.1.

Mr. Parminder Singh, Advocate, for
Mr. Amit Arora, Advocate,
for respondent no.2.

ANIL KSHETARPAL, J(Oral)

Plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below dismissing their suit for declaration challenging the decree for possession by way of specific performance of the agreement to sell dated 11.06.2009 on the ground that it does not effect their right.

At the outset, it must be noticed that the sale deed in favour of the plaintiffs is during the pendency of previous suit which was decreed on 11.06.2009, hence governed by rule of lis pendence.

Undisputedly, Surta Singh son of Harnam Singh was owner of the property. He executed an agreement to sell in favour of the defendants

on 17.03.2002. Thereafter, he transferred the property in favour of his 4 sons on 26.09.2002 through a transfer deed which has not come on record. Suit was filed by the defendants on 05.02.2003 seeking possession by way of specific performance of the agreement to sell. In the aforesaid suit, certain sale deeds executed by these 4 sons prior to the institution of the suit were also challenged and subsequent vendees were impleaded as party-defendants.

The court while deciding the suit on 11.06.2009 held that defendants no.7, 8 and 9 in the previous suit were held to be bonafide purchasers and consequently sale in their favour executed by the sons of Sucha Singh was protected being bonafide purchasers for valuable consideration. Plaintiffs as noticed above purchased the property from the son, namely Mangal Singh on 06.11.2003, which is much after the institution of the suit.

Thus, both the courts have dismissed the suit.

Learned counsel for the appellant with all vehemence at his command has argued that once other sale deeds executed by the sons were protected in the previous suit in favour of defendants no.7, 8 and 9 in the previous suit, therefore, on same parity his client is also entitled to avoid the decree and consequent sale deed in favour of defendants.

This court has considered the submission.

There is a fundamental difference between the sale deeds in favour of defendants no.7, 8 and 9 and the sale deed executed in favour of the plaintiffs-appellants. The sale deed in favour of the plaintiffs-appellants is during the pendency of the suit. Whereas sale deed in favour of defendant nos.7, 8 and 9 were before the institution of the suit. Still further Surta

Singh before transferring the property in favour of his 4 sons, had entered into an agreement to sell. His sons would remain bound by the agreement to sell executed by their father.

Learned counsel for the appellants further submitted that Surta Singh or his sons did not choose to contest the previous suit and, therefore, the aforesaid suit was collusive. Another grievance of the appellants is with respect to failing of the first appellate court to decide application for additional evidence.

This court has considered that submission. It is not disputed that the aforesaid suit had been contested by subsequent purchasers and after contest the suit was decreed. Hence, the previous decree dated 11.06.2009 cannot be said to be result of any collusion.

It is well settled that purchaser during lis-pendence is bound to sink or swim with the result of litigation. Hence, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

By way of additional evidence, appellants wanted to produce copies of jamabandi for the year 2012-13, khasra Girdwari, Fard Haqiat 2012-13 and original site plan dated 18.02.2015. This court has taken into consideration the aforesaid documents but find that these documents do not advance the case of the plaintiffs. Hence, even on second ground, this court does not find any good ground to interfere.

The regular second appeal is dismissed.

November 13, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No