

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Regular Second Appeal No. 509 of 2019(O&M)

Date of Decision: May 16 , 2019.

Rajbala

..... APPELLANT (s)

Versus

Gopi and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Yashveer Kharb, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellant/defendant No.2 has filed this appeal being aggrieved of judgments and decrees dated 30.10.2015 and 07.08.2018 passed by the learned Civil Judge (Junior Division), Panipat and learned Additional District Judge, Panipat. The suit for specific performance of the agreement to sell dated 12.01.2010 with consequential relief of permanent injunction filed by respondents No.1 to 7 i.e., the plaintiffs and declaration to the effect that sale-deed dated 29.06.2011 executed by defendant No.1 in favour of defendant No.2 – present appellant, is illegal, null and void qua the plaintiffs was decreed by the

learned trial court. Appeal filed by defendants No.1 and 2 was dismissed by the learned Additional District Judge, Panipat.

Brief facts as pleaded in the plaint are that, defendant No.1-Rajinder was the owner in possession of the suit property. Defendant No.1 statedly executed agreement dated 12.01.2010 in favour of plaintiff No.1-Gopi and Satpal (since deceased), predecessor-in-interest of plaintiffs No.2 to 7 for consideration of ₹3,00,000/-. Full and final payment of ₹3,00,000/- was received by defendant No.1 from the plaintiffs in the presence of the witnesses. Possession of the suit property was handed over to the plaintiffs. It was agreed that sale-deed shall be executed in favour of the plaintiffs or any other person as per their desire. Satpal i.e., predecessor-in-interest of plaintiffs No.2 to 7 however passed away on 13.03.2011. Plaintiffs No.2 to 7 being the legal heirs of Satpal requested defendant No.1 for execution and registration of the sale-deed of the suit land in their favour, besides, plaintiff No.1. However, defendant No.1 kept postponing the matter and in July 2011, defendant No.2 i.e., the present appellant informed the plaintiffs that she had purchased the suit from defendant No.1 by way of registered sale-deed dated 29.06.2011. She asked them to vacate the suit property. The plaintiffs, it is pleaded, were always ready and willing to perform their part of the contract but defendant No.1 in an illegal manner executed a subsequent sale-deed dated 29.06.2011 in favour of defendant No.2 and the defendants started threatening the plaintiffs with dispossession. Hence, the suit was filed.

Upon notice, defendant No.1 filed written statement taking various preliminary objections. It was denied that defendant No.1 ever executed any

agreement to sell in favour of the plaintiffs or received a consideration of ₹3,00,000/- as alleged. It is stated that he never purchased the stamp paper bearing No.3439 dated 12.01.2010. Sale-deed dated 29.06.2011 was stated to be executed by him in favour of defendant No.2 out of his free will and volition after receiving full and final payment. It is submitted that the plaintiffs never approached him on 04.03.2012 as he was in judicial custody. Defendant No.2 filed a separate written statement. While taking various preliminary objections, it is stated that defendant No.2 is a bonafide purchaser of the suit land for consideration. Mutation dated 08.09.2011 had been entered and sanctioned in her favour after execution of the sale-deed. It was denied that the plaintiffs were in possession of the suit property. Defendant No.2 claimed to be in peaceful possession of the suit land. Dismissal of the suit was prayed for by both the defendants. Replication was not filed.

From pleading of the parties, following issues were framed by the learned trial court:-

1. Whether the plaintiffs are entitled for a decree of possession by way of specific performance of agreemetrn to sell dated 12.01.2010 in respect of the suit land, as detailed in the headnote of the plaint? OPP
2. If Issue No.1 is proved, whether the plaintiffs are entitled for declaration and permanent injunction, as prayed for? OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
4. Whether the plaintiffs have not come to the court with clean hands? OPD
5. Whether the plaintiffs have no cause of action to file the present suit? OPD
6. Whether the defendant No.2 is bonafide purchser of the suit land? OPD
7. Relief.

Evidence was led by the plaintiffs and defendant No.2 in support of

their respective stands. Defendant No.1, at that stage, dissociated himself from the proceedings and he was proceeded against ex-parte on 08.01.2015.

Learned trial court on considering the evidence on record, facts and circumstances decreed the suit filed by the plaintiffs and directed execution of the sale-deed by defendant No.1 in favour of the plaintiffs. Appeal preferred by both the defendants was dismissed by the learned Additional District Judge, Panipat vide judgment and decree dated 07.08.2018.

Present appeal has been filed by defendant No.2-Smt. Rajbala only. Defendant No.1-Rajinder has not filed any appeal challenging the said judgment and decree dated 07.08.2018.

Learned counsel for the appellant vehemently argues that the appellant is a *bona fide* purchaser of the property for consideration without any notice of the earlier agreement to sell between the parties. It is contended that the agreement to sell, Ex.P1, is not proved on record. Though entire consideration amount of ₹3,00,000/- is stated to have been handed over to the vendor-Rajinder, there is no proof of the same. Moreover, no time was specified in the said agreement to sell for execution of the registered sale deed. There were criminal proceedings pending between Rajinder and the plaintiffs much prior to the agreement to sell, thus, it is opposed to all reasons that such transaction would have been carried out between the two parties. Reference is also made to an agreement dated 10.02.2009, Mark DA, purportedly entered into by plaintiff no.1 and his brother-Satpal with Rajinder regarding the suit property. It is further submitted that this document has not been taken into consideration by the learned courts below. It is further submitted that, at best, it is the alternate relief

of recovery of the consideration amount to which the plaintiffs may be entitled. It is the present appellant, who has been defrauded by Rajinder. Agreement to sell dated 12.01.2010 is clearly a fraudulent document as is evident from the testimony of PW1, himself. The stamp vendor in this case was not examined to prove the execution of the agreement. It is contended that names of the executants were typed while those of the witnesses are handwritten. Witnesses of the agreement to sell are the sons of the plaintiff, which casts a shadow of suspicion on the said agreement. It is thus prayed that the present appeal be allowed, both the judgments and decrees be set aside and suit filed by the plaintiffs be dismissed throughout.

I have heard learned counsel for the appellant at length and have also perused the photocopy of the record, which was produced by him in Court today.

The plaintiffs in order to prove agreement to sell dated 12.01.2010 examined PW1 Gopi i.e., plaintiff No.1, PW2 Anil Kumar who is the son of Satpal i.e., the other purchaser and PW3 Naveen Sharma, Advocate. All the witnesses clearly stated that defendant No.1 had agreed to sell the suit property to plaintiff-Gopi and Satpal, predecessor-in-interest of plaintiffs No.2 to 7 for a total consideration of ₹3,00,000/-. They have deposed about the execution of the said agreement to sell dated 12.01.2010. PW1 Gopi and PW2 Anil Kumar have categorically stated that a sum of ₹3,00,000/- was received by defendant No.1- Rajinder from plaintiff-Gopi and Satpal. PW3 Naveen Sharma, Advocate is the person who scribed the agreement to sell dated 12.01.2010. PW3 Naveen Sharma, Advocate clearly stated that he drafted the agreement to sell dated

12.01.2010, which was read read over and explained to the parties, who affixed their signatures thereon after admitting the contents thereof to be correct. The stamp papers for execution of the agreement to sell dated 12.01.2010 were purchased by defendant No.1. Endorsement of the stamp vendor is available at the back of second page of the agreement as well as the signature of defendant No.1-Rajinder.

It is pertinent to note, at this stage, that defendant No.1 has denied the execution of agreement to sell dated 12.01.2010 and has claimed the same to be the result of fraud on the part of the plaintiffs. As mentioned earlier, defendant No.1 did not even step in the witness box. He led no evidence to prove the existence of any kind of fraud, whatsoever perpetrated by the plaintiffs. Defendant No.1 was admittedly proceeded against ex-parte before the learned trial court. Though he filed an appeal before the learned Additional District Judge, Panipat, no appeal has been preferred by the said defendant before this Court. Much stress has been laid by learned counsel for the appellant on the criminal litigation which was pending between the parties due to which, it is submitted that no such instrument of sale of the property in question could have been executed. However, learned counsel for the appellant does not deny that the said criminal litigation was indeed with respect to the sale and purchase of the land itself (though no such details are forthcoming). In this situation, it is rightly held by the learned Additional District Judge, Panipat that agreement to sell dated 12.01.2010 (Ex.P1) could have been executed to resolve the said dispute with regard to sale and purchase of the land in question.

Argument raised by learned counsel for the appellant in respect to

the purported agreement dated 10.02.2009 (Mark 'DA') is noticed only to be rejected. This is so, for the reason that learned counsel for the appellant does not deny in any manner that there are no pleadings in the written statement of either Rajinder (defendant No.1) or the present appellant in respect to the purported agreement dated 10.02.2009 (Mark 'DA').

It is further not in dispute that the present appellant is also a resident of the same village as are the plaintiffs and defendant No.1. The evidence on record does not point out to the factum of present appellant being a bonafide purchaser of the property for consideration. There is no evidence whatsoever on record to indicate that agreement to sell dated 12.01.2010 (Ex.P1) is the result of any fraud or collusion between the plaintiffs. Merely because the witnesses are the sons of one of the vendees, does not in any manner point to collusion. It is a matter of record that defendant No.1 did not even come forward to testify in this case, leave alone make an attempt to have his signatures examined from an expert.

Learned counsel for the appellant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the learned courts below have rendered concurrent findings of facts on the basis of correct and proper appreciation of the evidence on record.

No other argument has been raised.

There is a delay of 19 days in refiling of the present appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in refiling of this appeal has been rendered academic. Application is

accordingly disposed of.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 30.10.2015 and 07.08.2018 passed by the learned Civil Judge (Junior Division), Panipat and learned Additional District Judge, Panipat, which warrants any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

May 16 , 2019.
'om'

(**LISA GILL**)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No