

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

RSA No.1145 of 1992 (O&M)

Date of decision: 22.01.2019

Darshana Devi

..... Appellant

Versus

Bishan Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L. Saggar, Sr. Advocate with
Mr. Rohit Joshi, Advocate
for the appellant.

Mr. R.S. Manhas, Advocate
for respondents No.1 to 3.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the judgment of the First Appellate Court reversing the judgment passed by the trial Court and ordering refund of the earnest money.

In the considered opinion of this Court, the following substantial question of law arises for consideration:-

“Whether the judgment passed by the First Appellate Court is result of misreading and non-reading of evidence while returning a finding that defendants No.2 and 3 are bona fide purchasers as per Section 19(b) of the Specific Relief Act, 1963.”

Detail facts have already been noticed by the Courts below, however to complete narration, some facts are being noticed.

Plaintiff filed a suit claiming possession by way of specific

performance of the agreement to sell with assertions that there was an oral agreement for sale of the property in dispute and Rs.3,000/- was paid as earnest money. The total sale consideration agreed to was Rs.16,000/-. Since the husband of the plaintiff Kishan Singh was mortgagee with possession for a sum of Rs.10,000/-, hence, that amount was to be adjusted and the remaining amount of Rs.3,000/- was to be paid at the time of execution and registration. On 12.02.1986, the parties after purchasing the stamp papers worth Rs.2,000/- executed and signed the sale deed. However, the sale deed could not be registered as the Registering Authority was not available in its office. Defendant No.1 thereafter sold the property to defendants No.2 and 3 vide sale deed dated 29.08.1986 forcing the plaintiff to file the suit.

Both the Courts on appreciation of evidence have found that execution of the sale deed dated 12.02.1986 is proved although, unregistered. The Courts, thus, have held that there was an oral agreement pursuant where to sale deed was executed but not registered.

Learned First Appellate Court has held that the defendants No.2 and 3 are bona fide purchasers and therefore, relief of refund of the earnest money was only ordered.

In the considered view of this Court, the judgment passed by the learned First Appellate Court is patently erroneous for more than one reason which are as under:-

1. Manjit Singh-defendant No.2 when appeared in evidence has admitted that defendant No.1 i.e. owner-Bishan Singh is his uncle and his father and father of Manjit Singh are co-sharers in one Khata/Khewat of land.

2. It is undisputed that husband of the plaintiff Kishan Singh was mortgagee in possession of the property. Defendants No.2 and 3 made no inquiry from Kishan Singh with regard to title of the property which was normal unless there was collusion between defendant No.1 on the one hand and defendants No.2 and 3 on the other hand.

3. A reading of sale deed dated 29.08.1986 in favour of defendants No.2 and 3, it is apparent that out of total sale consideration of Rs.25,000/-, Rs.10,000/- is alleged to have already been paid at home whereas Rs.5,000/- was paid in cash before the Sub-Registrar and the remaining amount of Rs.10,000/- was kept as a mortgage amount for redemption. No evidence has come on file that there was any prior agreement to sell in favour of defendants No.2 and 3.

4. As per defendants No.2 and 3, they have paid amount of Rs.10,000/- at home and Rs.5,000/- at the time of registration. However, no evidence has been produced that this amount was withdrawn from any bank or from what source the amount had come.

Learned First Appellate Court has held that defendants No.2 and 3 to be bona fide purchasers on the ground that the oral agreement to sell in favour of plaintiff has not been proved. The finding is erroneous because the sale deed dated 12.02.1986 which has been proved on file, specifically records that there was an oral agreement pursuant whereof Rs.3,000/- was received as earnest money, therefore, there was no doubt about the correctness of the plea of the plaintiff.

In view of the above, the finding of the learned First Appellate Court is erroneous and hence, set aside and that of the trial Court is restored.

There shall be a decree for possession by way of specific

performance of the agreement to sell. However, since the balance amount of sale consideration has remained with the plaintiff-appellant, therefore, she shall be liable to pay the balance amount along with interest @ 10% per annum, within a period of three months, from the date of receipt of certified copy of this order.

Hence, question of law is answered in favour of the appellant.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Regular Second Appeal is allowed.

22.01.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No