

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

RSA No.3499 of 2010 (O&M)
Date of Decision: May 10, 2019

Rajinder Singh

...Appellant

Versus

Amar Singh LR of Bhola Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. I.K. Mehta, Senior Advocate with
Mrs. Ranjit Mehta, Advocate
for the appellant.

Mr. Sandeep Jasuja, Advocate
for respondent No.1.

JAISHREE THAKUR, J. (Oral)

1. The instant appeal has been filed against the judgment and decree dated 11.02.2010 passed by the first Appellate Court whereby, the appeal filed by the appellant-defendant No.3 against the judgment and decree dated 21.11.2008 passed by the lower court, decreeing the suit of respondent No.1-plaintiff, has been dismissed.

2. In brief, the facts of the case are, that respondent No.1-plaintiff filed a suit for specific performance of contract on the basis of agreement to sell dated 17.07.1998, whereby respondent No.2/defendant No.1 agreed to sell the suit property, as fully described in the site plan, for a sum of ₹ 80,000/- and received a sum of ₹ 66,000/- as earnest money. The balance

sale consideration amount was to be payable to respondent No.2/defendant No.1 at the time of execution and registration of the sale deed on 15.10.1998. On 15.10.1998, respondent No.1-plaintiff along with balance sale consideration amount and other expenses was present in the office of Sub Registrar, Fazilka to get the sale deed executed and registered, but respondent No.2/defendant No.1 did not turn up and respondent No.1/plaintiff got his presence marked by moving an application dated 15.10.1998. It was alleged that since during the pendency of the suit, respondent no.2/defendant No.1 had sold the suit property to respondent No.3/defendant No.2, so the said sale deed was liable to be set aside, being later in time to the sale effected by respondent No.2/defendant No.1 in favour of respondent No.1-plaintiff. It was also alleged that since during the pendency of the suit, respondent No.3/defendant No.2 sold the suit property in favour of appellant-defendant no.3, the said sale deed was also liable to be cancelled being illegal, void and without consideration. It was contended that respondent No.1-plaintiff repeatedly requested respondent No.2/defendant No.1 to get the same deed executed in terms of the agreement to sell dated 17.07.1998, but all in vain. Ultimately, a legal notice was served upon respondent No.2/defendant No.1 calling upon her to perform her part of the contract, but she refused to accept the same. Hence, this suit.

3. Upon notice, initially respondents No.2/defendant No.1 appeared, but later on he was proceeded against ex parte whereas, respondent No.3/defendant No.2 and appellant/defendant No.3 appeared and filed their written statement. Respondent No.3/defendant No.2, apart

from taking the preliminary objections, pleaded that he was bona fide purchaser having purchased the suit property without notice of alleged agreement dated 17.07.1998 and mutation No.7447 was also sanctioned in his favour. Respondent No.3/defendant No.2 sold the suit property in favour of the appellant/defendant No.3 vide sale deed dated 23.05.2001 and now said appellant/defendant No.3 was in possession of the suit property. Mutation No.7656 was also sanctioned in favour of the appellant/defendant No.3. The appellant/defendant No.3, in his written statement pleaded that he purchased the suit property from respondent No.3/defendant No.2 vide sale deed dated 23.05.2001 and was continued to be in possession from that very day. It was pleaded that before purchasing the suit property from respondent No.3/defendant No.2, the appellant/defendant No.3 enquired about the ownership of the suit property. From the revenue record, respondent No.3/defendant No.2 was found to be owner of the same, as he had purchased the same from Reshma Bai (respondent No.2/defendant No.1) vide sale deed dated 10.10.2000, as such, he had purchased the suit property from respondent No.3/defendant No.2. It was pleaded that the appellant/defendant No.3 purchased the suit property for valuable consideration and was residing in the suit property was owner, after spending a lot of money for its construction from his own pocket.

4. From the pleadings of the parties, issues were framed and thereafter, evidence was led by the parties. After hearing both the sides, the lower court decreed the suit of respondent No.1/plaintiff. Feeling aggrieved, the appellant/defendant No.3 filed an appeal before the first Appellate Court, which also came to be dismissed. Now, both the

judgments and decrees of the courts below have been assailed by the appellant/defendant No.3 in this regular second appeal.

5. Mr. I.K. Mehta, learned Senior counsel, assisted by Mrs. Ranjit Mehta, Advocate appearing on behalf of the appellant/defendant No.3 argues that the appellant is a bona fide purchaser of the suit property, as such, both the courts below have erred in decreeing the suit of respondent No.1/plaintiff.

6. Mr. Sandeep Jasuja, learned counsel appearing on behalf of respondent No.1/plaintiff argues that no ground is made out to interfere with the well reasoned concurrent findings recorded by the courts below.

7. I have heard learned counsel for the parties and have perused the case file.

8. A perusal of the grounds of appeal would reflect that the only ground taken by the appellant is that the lower Appellate Court had erred in not deciding the application under Order 41 Rule 27 CPC filed by the appellant/defendant No.3. While considering this contention raised on behalf on behalf of the appellant/defendant No.3, by an order dated 27.08.2010, record of the courts below was requisitioned. This court, by an order dated 15.03.2011, had dismissed the application under Order 41 Rule 27 CPC and notice of motion was issued only for an attempt to get the matter amicably settled on payment of some adequate compensation to the appellant-defendant No.3. Thereafter, in view of the aforesaid observation made by this court on 15.03.2011, the matter was referred to the Mediation and Conciliation Centre of this court to make an effort to settle the dispute, which remained unsuccessful.

9. In view of the above, it is clear that the ground taken by the appellant/defendant No.3 in the instant appeal that his application moved under Order 41 Rule 27 CPC had not been decided, has already been rejected by this court by an order dated 15.03.2011. Notice of motion was issued in the said matter only to make an attempt to get the matter amicably settled, which remained unsuccessful. This court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-defendant No.3, which has no merit.

10. Dismissed.

May 10, 2019

vijay saini

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No