

In the High Court of Punjab and Haryana at Chandigarh

**RSA-2467 of 2011 (O&M)
Date of Decision: 22.7.2019**

Bachittar Singh and others

---Appellants

versus

Jaspal Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Vipin Mahajan, Advocate
for the appellants**

**Mr. Prateek Mahajan, Advocate,
for respondent No. 3**

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for possession by way of specific performance of agreement to sell dated 26.8.2003 in respect of land measuring 4 kanal 11 marlas, detailed in head note of the plaint, filed by the respondents-plaintiffs was decreed by the trial court to the following effect:-

“Suit of the plaintiffs succeed and defendants No. 7 to 10 are directed to execute the sale deed in favour of the plaintiffs within a period of two months from today pertaining to the suit land after receiving Rs. 50,000/- the balance sale consideration.”

The appeal preferred by unsuccessful defendants No. 7 to 10

(appellants herein) was dismissed by the Additional District Judge (Ad hoc) Fast Track Court, Gurdaspur whereby findings recorded by the trial court were affirmed without any variance.

The appellants have claimed themselves to be bona fide purchasers for consideration on the basis of sale deed dated 25.9.2003 executed by Sohan Singh defendant No. 1 for himself as well as attorney of defendants No. 2 to 6, therefore, sale qua suit land for consideration of Rs. 1,66,500/- in their favour is protected being bona fide purchasers.

The respondents-plaintiffs propounded agreement to sell dated 26.8.2003 with the averments that defendants No. 1 to 6 agreed to sell the suit land for sale consideration of Rs. 2,25,000/-. A sum of Rs. 1,75,000/- was paid as earnest money and balance sale consideration was agreed to be paid on 26.11.2003, the date fixed for registration of sale deed. The plaintiffs always remained ready and willing to perform their part of the agreement and they attended the office of Executive Magistrate/Joint Sub Registrar on 27.11.2003 as 26.11.2003 was a holiday. The plaintiffs were having balance sale consideration and sufficient amount for purchase of stamp papers and incurring registration expenses etc. Defendants No. 1 to 6, in utter violation of the agreement to sell, executed sale deed dated 25.9.2003 in favour of defendants No. 7 to 10 who had full knowledge of agreement dated 26.8.2003 in favour of the plaintiffs. Sale deed executed by defendants No. 1 to 6 in favour of defendants No. 7 to 10 is illegal, null and void.

Defendants No. 1 to 6 filed the written statement and admitted that agreement to sell dated 26.8.2003 was executed in favour of the

plaintiffs and a sum of Rs. 1,75,000/- was received as earnest money. However, they denied that plaintiffs were ready and willing to perform their part of the agreement or they attended office of Joint Sub Registrar on 27.11.2003. It is pleaded that answering defendants were in dire need of money in the month of September 2003 and they approached the plaintiffs for execution and registration of the sale deed in pursuance of sale agreement dated 26.8.2003. When they delayed the matter on one pretext or the other, suit land was sold to defendants No. 7 to 10, vide sale deed dated 25.9.2003 for sale consideration of Rs. 1,66,500/-. They had intimated the subsequent purchasers i.e. defendants No. 7 to 10 that agreement to sell dated 26.8.2003 has been executed in favour of the plaintiffs but defendants No. 7 to 10 responded that they have no problem of the sale agreement dated 26.8.2003.

Defendants No. 7 to 10 filed the written statement and raised preliminary objections pertaining to non-maintainability of the suit; suit being bad for non-joinder of necessary parties and answering defendants being bona fide purchasers are protected under law. It is averred that defendants No. 1 to 6 sold the suit land for consideration of Rs. 1,66,500/- and executed sale deed dated 25.9.2003. Mutation pertaining to sale deed dated 25.9.2003 has already been sanctioned in favour of answering defendants and they are in physical possession of suit land. It is submitted that if there is agreement to sell dated 26.8.2003 in favour of the plaintiffs, the same is illegal, result of fraud, without consideration, ante dated and carry no weight in the eye of law. The answering defendants had no knowledge of agreement dated 26.8.2003, so they are bona fide purchasers

for valuable consideration.

The plaintiffs filed replication re-asserting their stand taken in the plaint and controverted the allegations raised in the written statement.

The trial court framed issues, reproduced in para 6 of the judgment. The parties were permitted to adduce evidence, detailed in paras 7 and 8 of the judgment of said court. Having heard counsel for the parties in the light of materials on record, the trial court negated plea of the appellants that they are bona fide purchasers and are protected by law. However, contention of the plaintiffs in respect of agreement of sale dated 26.8.2003 and their readiness and willingness to perform their part of the agreement was accepted and eventually suit of the plaintiffs/respondents was decreed, in the terms noticed hereinbefore.

The appeal filed by the appellants/defendants No. 7 to 10 did not find favour with the first appellate court.

Counsel for the appellants has assailed findings of the courts on issue No. 5 pertaining to their being bona fide purchasers and entitle to protection under law, by making two fold submissions. It is argued that agreement propounded by respondents-plaintiffs was never to knowledge of appellants, therefore, they purchased the suit land vide sale deed dated 25.9.2003 without notice. It is further argued that since the agreement to sell was not in existence and has been ante dated to cause loss to the appellants, there was no occasion for the appellants to know about agreement dated 26.8.2003. To bring home his contention, it is argued that agreement was not scribed by a regular deed writer. Manbir Singh Sekhon, Advocate, PW3, scribe of the agreement in his cross examination has

admitted that he has not maintained any register in respect of scribing of the document and no money was paid in his presence when he scribed agreement dated 26.8.2003. The stamp paper on which the agreement has been prepared does not bear the seal and complete signatures of stamp vendor, sufficient to create suspicion regarding correctness and authenticity of the agreement in question. Jaspal Singh, one of the plaintiffs appeared in the witness box and admitted in his cross examination that he has been residing at Kalanaur since his birth; there are 2/3 deed writers at Kalanaur; there is a sub tehsil at Kalanaur, the sale deeds are executed and registered in sub tehsil Kalanaur. He has further argued that admittedly the land in dispute is also located at Kalanaur. It is argued with vehemence that since the land is situated at Kalanaur and Kalanaur is a tehsil where the documents are registered, there was no reason for the plaintiffs to get the agreement of sale scribed from Sh. Manbir Singh Sekhon, Advocate at Gurdaspur or execute the document at Gurdaspur. It is argued with vehemence that this agreement of sale has been prepared by putting an earlier date to cause loss to the appellants who purchased the suit land for a valuable consideration vide registered sale deed dated 25.9.2003.

Counsel representing the respondents-plaintiffs, on the contrary, has supported findings recorded by the courts with the submission that findings recorded by the courts are based upon materials on record. It is further argued that counsel for the appellants has failed to point out that findings of the courts are either not based upon materials on record or the courts have ignored materials that have bearing on merits of warring claims of the parties. It is further argued that since the appellants have failed to

make out a case that consistent findings suffer from perversity or the appeal raises a question of law that needs determination in second appeal, intervention in consistent findings of the courts is not warranted.

Another submission made by counsel is that plea of the appellants that they are bona fide purchasers gets falsified and belied. It is argued that mutation in respect of inheritance to estate of Bawa Singh in favour of defendants No. 1 to 6 was sanctioned on 23.9.2003 in presence of Sohan Singh defendant No. 1 and said mutation was sanctioned in district Gurdaspur. Sohan Singh went back to U.P. as defendants No. 1 to 6 are residents of UP and got executed Power of Attorney on behalf of defendants No. 2 to 6 in his favour on 24.9.2003 and sale deed in favour of the appellants was executed on 25.9.2003. It is argued that haste in which the sale deed came in existence speaks volumes that appellants are neither bona fide purchasers nor entitle to protection under Section 41 of the Transfer of Property Act. In addition, it is argued that even plea of the appellants with regard to their having purchased the suit land on payment of sale consideration of Rs. 1,66,500/- gets falsified and belied, in view of the facts elicited in cross examination of Bachittar Singh, one of the appellants as well as recitals in the sale deed and endorsement of the registering authority i.e. Sub Registrar, Kalanaur.

I have heard counsel for the parties, perused the paper book and records.

The appellants have claimed themselves to be bona fide purchasers on the premise that they had no knowledge of agreement to sell dated 26.8.2003 or the said agreement is ante dated and sale in their favour

is for valuable consideration of Rs. 1,66,500/-.

Before advertng to the submissions made by counsel for the appellants that either they had no knowledge of agreement of sale or the said agreement has been ante dated to frustrate sale in their favour, I would like to deal with the issue 'whether sale in faovur of the appellants is for valuable consideration or otherwise?'

The appellants have relied upon sale deed dated 25.9.2003 marked as Ex. D1. On second page of the sale deed, it has been mentioned that amount of Rs. 1,66,500/- would be paid in cash before the Sub Registrar at the time of registration/attestation of the sale deed and nothing more is to be paid. Perusal of endorsement of the Sub Registrar makes it evident that no payment was made before the Sub Registrar, Kalanaur. The endorsement rather contains that zero amount was received by the vendor. Taking into consideration the recital aforesaid coupled with endorsement made by the Sub Registrar Kalanaur, on the document relied upon by the appellants, there is enough to say that sale in favour of appellants is not for valuable consideration. Not only this, Bachittar Singh defendant No. 7 and one of the appellants in his cross examination, in this context has deposed to the following effect:-

“It is incorrect to suggest that I have not paid any sale consideration regarding Ex. D1 to defendants No. 1 to 6 in the presence of Sub Registrar. I do not know if any sale consideration was paid in the presence of Sub Registrar. Sub Registrar made endorsement regarding payment of sale consideration on the sale deed. It is wrong to suggest that sale

deed Ex. D1 is without consideration and the same was procured by me and defendants No. 8 to 10 in collusion with Sohan Singh defendant No. 1, scribe and attesting witnesses of the sale deed to defeat right of plaintiffs.”

A cumulative view of the aforesaid discussion leads to an irresistible conclusion that sale deed Ex. D1 was executed by defendant No. 1 in favour of defendants No. 7 to 10 without any sale consideration having been paid to the vendor. This fact alone gives a strong jolt to plea of bona fide purchasers raised by the appellants. Since the sellers/owners of suit land namely Sohan Singh and others executed sale deed in favour of the appellants without any sale consideration, it further shows that sale deed in question is the result of collusion inter se the defendants to defeat right of the plaintiffs/respondents No. 1 to 3.

There is no denial that mutation qua inheritance of Bawa Singh who died in the year 1981 was sanctioned at Kalanaur on 23.9.2003 when Sohan Singh produced death certificate of Bawa Singh. Sohan Singh was available at Kalanaur District Gurdaspur on 23.9.2003. On the very next day i.e. 24.9.2003, a Power of Attorney was executed and registered in favour of Sohan Singh at the behest of defendants No. 2 to 6 at Bilaspur in UP. On the succeeding day i.e. 25.9.2003, the sale deed in question was executed by Sohan Singh for himself as well as attorney of Labh Kaur and others in favour of the appellants and that too without receipt of any sale consideration. Counsel for the respondents is right in his submissions that the manner in which the defendants proceeded to alienate suit land in favour of the appellants/defendants No. 7 to 10, it creates a serious doubt about

bona fides of the appellants or they being not aware of agreement to sell dated 26.8.2003. The non-payment of sale consideration by the appellants also falsifies and belies the version of defendants No. 1 to 6 that they were in need of money and for that reason they executed the sale deed in favour of defendants No. 7 to 10 despite there existing an agreement of sale between the plaintiffs and defendants No. 1 to 6. In this view of the matter, I find it difficult to accept contention of the appellants to intervene in the findings of the courts rejecting plea of the appellants that they are bona fide purchasers for valuable consideration. In the given circumstances, this court need not to dilate on the issue whether agreement of sale has been ante dated or the appellants have no knowledge of agreement of sale.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

22.7.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No