

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

RSA-2347-2013(O&M)

Date of decision:-26.2.2019

Smt.Meena Rani and another

...Appellants

Versus

Lal Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Hitesh Pandit, Advocate
for the appellants.

Mr.Satnam Chauhan, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Lal Singh had filed a suit against Ms.Kulwant Kaur and Smt.Meena Rani seeking possession by way of specific performance of agreement to sell in respect of house No.2574 comprising one room, verandah along with latrine, bathroom, stair case, gate, water hand pump, water tap, electricity fittings, connection etc. situated at Gaushala Road near Purana Bazar, Machhiwara, Tehsil Samrala, District

Ludhiana shown in red colour in the site plan attached with the plaint (hereinafter referred to as the suit property), in the alternative suing for recovery of Rs.1,72,000/- i.e. Rs.20,000/- being double the amount of earnest money and Rs.1,52,000/- as damages/compensation/interest, in addition to that craving for grant of permanent injunction restraining defendant No.2 – Smt.Meena Rani from alienating the suit property or creating any charge thereon or putting any other person in possession of that property.

As per the version of the plaintiff, the defendant No.1 – Smt.Kulwant Kaur being owner of the house in question agreed to sell the same to the plaintiff for a sum of Rs.1,72,000/- vide written agreement dated 10.11.2005, receiving a sum of Rs.10,000/- as earnest money; that it was agreed that the sale deed would be executed and got registered on 4.1.2006 on payment of balance consideration amount; that in case the vendor refused to execute the sale deed, the vendee would be entitled to get the sale deed executed and registered through Court of law and in the alternative would be entitled to recover double the earnest money and in case the plaintiff backed out of the transaction then amount of earnest money paid would stand forfeited and agreement treated as cancelled; that it was categorically mentioned in the agreement that defendant No.1 had not earlier agreed to sell that property to any other person. According to the plaintiff, he has been ready and willing to perform his part of

agreement and to get the sale deed executed on payment of balance consideration amount but defendant No.1 put off the matter on one pretext or the other and in the end of November, 2005, the plaintiff came to know that defendant No.1 was trying to sell the house in question to some other person, as such, he asked defendant No.1 to execute the sale deed; that defendant No.1 stated that she would do so if plaintiff paid her an additional amount of Rs.50,000/-, otherwise to sell of the property to someone else; that the plaintiff filed a suit for permanent injunction seeking to restrain the defendant from alienating the suit property to anybody else; it was so done by him on 30.11.2005; in that suit the Court passed an order dated 1.12.2005 directing that defendant would notify to subsequent vendee regarding the pendency of the suit and would intimate the Court regarding the alienation so made along with the name and particulars of the vendees so as to bind them with the outcome of the suit before making the alienation; that the plaintiff came to know that on 19.12.2005 defendant No.1 had already executed the sale deed dated 12.12.2005 with respect to the house in suit in favour of defendant No.2 – Smt.Meena Rani; that the sale deed by defendant No.1 in favour of defendant No.2 was illegal, null and void and that he had requested defendant No.1 to execute the sale deed in his favour and defendant No.2 to join defendant No.1 in the execution of the sale deed but defendants failed to execute and get registered the sale deed

as requested to them by the plaintiff giving rise to a cause of action to the plaintiff to bring the suit in question.

On notice both the defendants had appeared and filed a joint written statement contesting the suit raising preliminary objections challenging the locus standi of the plaintiff to file the suit contending that the plaintiff was estopped by his own act and conduct to file the suit; that the plaintiff had not come to the Court with clean hands; that the suit as framed was not maintainable; that agreement set up by the plaintiff was forged and false. On merits, the defendants contended that defendant No.1 being owner in possession of the house in question had entered into an agreement dated 6.9.2005 with Sh.Sohan Lal for a sum of Rs.1,60,000/- receiving Rs.40,000/- as earnest money and date for execution of registration of sale deed was fixed as 28.12.2005; accordingly defendant No.1 had executed and got registered sale deed dated 12.12.2005 in favour of defendant No.2 on the basis of agreement to sell dated 6.9.2005 after receipt of remaining sale consideration of Rs.1,20,000/- and the sale deed was got registered on 14.12.2005, in that way defendant No.2 was a bona fide purchaser for consideration without notice and sale deed dated 14.12.2005 was valid and legal document. The defendants denied that any agreement to sell the house in question was entered into by defendant No.1 in favour of the plaintiff, rather the said agreement was dubbed as a forged and fabricated document.

Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is remained ready and willing to perform his part of the agreement dated 10.11.2005? OPP.
2. If issue No.1 is proved in affirmative, whether the plaintiff is entitled to specific performance of the agreement or entitle to recover damages as alleged? OPP.
- 2A Whether defendant No.1 executed agreement to sell dt. 6.9.2005 in favour of husband of defendant no.2? OPD.
- 2B Whether defendant no.2 is bonafide purchaser for consideration without notice? OPD.
- 2C Whether plaintiff is entitled to injunction as prayed for? OPP.
3. Whether the suit is not maintainable in the present form? OPD.
4. Relief.

In order to prove its case, the plaintiff had got recorded his statement as PW3 besides examining Sh.Naresh Kumar Khera, Draughtsman as PW1 and Sh.Ashok Kumar as PW2.

On the other hand, the defendant No.1 had appeared

herself as DW1 while defendant No.2 Meena Rani had stepped into the witness box as DW3. They further examined Sh.Sohan Lal as DW2, Sh.Guran Ditta Mal as DW4, Sh.Dev Raj as DW5 and Sh.Kewal Kumar, Draughtsman as DW6.

In rebuttal evidence, plaintiff again examined Sh.Kuldip Singh, Registration Clerk as PW4 and Sh.Kulwant Singh, DRK Pargana Clerk, Jagraon as PW5.

After hearing the learned counsel for the parties, the trial Court vide judgment and decree dated 28.3.2011 decreed the suit of the plaintiff with costs and he was held entitled to specific performance of agreement to sell dated 10.11.2005 after holding the sale deed dated 14.12.2005 by defendant No.1 in favour of defendant No.2 as illegal, null and void, ineffective qua rights of the plaintiff. The plaintiff was directed to deposit balance sale consideration within three months from the receipt of copy of judgment and then both the defendants would execute the sale deed in favour of the plaintiff and in case they failed to do so, the plaintiff would be at liberty to get the sale deed executed through Court. Furthermore, defendant No.2 was restrained from alienating or putting any incumbrance over the suit property.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Ludhiana, which was assigned to learned Additional District Judge,

Ludhiana, who vide judgment dated 16.2.2013 dismissed the said appeal upholding the judgment and decree passed by the trial Court.

Being dissatisfied with the judgments and decrees passed the Courts below, the defendants filed the present regular second appeal before this Court, notice of which was issued and the respondent-plaintiff appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I do not find any merit in the said appeal.

Both the courts below by proper appraisal of evidence and interpretation of law have come to the conclusion that defendant No.1 had entered into an agreement to sell house in suit with the plaintiff on 10.11.2005 for a sum of Rs.1,72,000/- receiving a sum of Rs.10,000/- as earnest money and final date for execution and registration of sale deed fixed as 4.1.2006 and that plaintiff has been ready and willing to perform his part of the agreement and further defendant No.1 had entered into an agreement to sell with Sh.Sohan Lal, husband of defendant No.2 later on and then executed sale deed in favour of defendant No.2. The pleas raised by defendants that the agreement set up by the plaintiff was forged and fabricated and that defendant No.2 was a bona fide purchaser for consideration without notice were rejected. Sound and valid reasons have been given for coming to this conclusion. I do not see any reason to interfere with such concurrent findings recorded by the Courts below.

No substantial question of law is found to be involved in this appeal, which is found to be without any merit and is dismissed accordingly.

26.2.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No