

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

RSA No.3872 of 2016 (O&M)

Date of decision:10.01.2019

Basant Kumar Virmani

... Appellant

Vs.

Ram Sewak and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Tushar Sharma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal is directed against the judgment and decree of Lower Appellate Court, whereby, suit of the plaintiff-respondent no.1 dismissed by the trial Court, has been decreed.

The plaintiff challenged the sale deed of appellant-defendant dated 20.07.2007 in respect of suit property of which he had already acquired the ownership on the basis of the registered sale deed dated 10.07.2007.

The defendant opposed the suit and pleaded that he had already acquired the right in the suit property by virtue of agreement to sell dated 07.07.2007 and had paid an earnest money of Rs.4.00 lakhs i.e. Rs.2.00 lakhs in cash and another Rs.2.00 lakhs by way of paid cheque.

The trial Court by noticing the aforementioned fact dismissed the suit but the Lower Appellate Court decreed the suit.

Mr. Tushar Sharma, learned counsel appearing on behalf of the appellant-defendant submitted that agreement to sell of June 2007 was nowhere pleaded, therefore, such evidence and examination of the witnesses was beyond pleadings. This fact was totally ignored by the Lower Appellate Court. Though both the Courts below have rejected the agreement to sell of the respondent-plaintiff, yet the Lower Appellate Court decreed the suit. In the absence of the agreement to sell, sale deed was not liable to be rejected. There was absolutely fraud amongst the vendors and the plaintiff as the defendant has parted with the amount of Rs.4 lakhs. The entire piece of land which was in the ownership of the vendor had been sold. The witnesses to the agreement to sell have also been examined. In such circumstances, the sale deed could not have been set aside.

I have heard the learned counsel for the appellant-defendant, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Tushar Sharma for the simple reason that vendors of the appellant-defendant had no title or interest when the sale deed dated 20.07.2007 was executed in favour of the appellant, thus, the sale deed does not confer any title. In other words, vendors of the appellant-defendant had already been divested of the ownership by virtue of the sale deed dated 10.07.2007. In such circumstances, sale deed was valid in law.

The findings of fact and law rendered by the Lower Appellate Court, in my view, are perfectly legal and justified and do not suffer from illegality and perversity.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 10, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No