

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

**RSA No.1134 of 2014 (O&M)
Date of Order: 06.03.2019**

Hariya

..Appellant

Versus

Mam Chand

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Adarsh Jain, Advocate,
for the appellant.

Mr. Lokesh Sinhal, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Paramount duty of the court is to dig out the truth and do substantive justice between the parties. It is the duty of the court to unearth the evil design and lift the veil to arrive at a correct conclusion.

Defendant no.2-appellant Hariya is in the regular second appeal against the judgments passed by the courts below granting decree for specific performance of the agreement to sell allegedly executed by Tej Ram, respondent no.2(defendant no.1 in the suit) in favour of Mam Chand, plaintiff-respondent No.1 herein. The execution of the agreement to sell dated 08.10.1997 is proved. However, certain facts have come to the notice of this court which weigh the balance in favour of defendant-appellant and decline the prayer for specific performance of the agreement to sell. The facts which have come to the notice of this court and overlooked by the courts below are:-

- (1) Plaintiff-Mam Chand and Tej Ram are cousins. Their great grand father was common.
- (2) Tej Ram, the owner, although, filed a written statement contesting the suit, however thereafter absented from the proceedings. However, when Ganga Deen PW1, the attesting witness of the agreement to sell appeared in evidence, he admitted that Tej Ram is present in the Court. His statement was recorded on 23.10.2007. Apart from him, PW3-Mam Chand, the plaintiff when appeared in evidence also admitted the fact that Tej Ram is present in court. Although, effort was made to explain his presence on the ground that Tej Ram had another litigation pending and therefore he has come to court.
- (3) Plaintiff while filing the suit did not disclose that plaintiff is related to defendant no.1, the owner of the property.
- (4) The alleged agreement to sell in favour of the plaintiff is dated 08.10.1997, whereas the target date for execution and registration of the sale deed was 15.06.1999 i.e. after a period of one year and 7/8 months, which is pretty unusual long time.
- (5) Defendant no.2 has purchased the property through registered sale deed dated 11.03.1999. The present suit has been filed on 28.08.1999. It is undisputed that Defendant no.2-appellant is neither related with the plaintiff nor with defendant no.1.

- (6) It has come in evidence that defendant no.2 has also purchased remaining land out of this khewat during the pendency of the suit.

Learned counsel appearing for the respondent with all vehemens at his command has submitted that once the execution of the agreement to sell and payment of earnest money is proved then the court has to pass a decree for specific performance of the agreement to sell. He has further submitted that while exercising jurisdiction in second appeal, the court should not interfere in exercise of discretion. He has further submitted that defendant no.2 is not proved to be bonafide purchaser. He has further submitted that defendant no.2-appellant has failed to examine any independent witness from the village. Learned counsel has further submitted that a suit for permanent injunction was filed by plaintiff-respondent Mam Chand on 13.03.1999 restraining defendant no.1-Tej Ram from alienating the property. He has further submitted that payment of sale consideration has not been proved as no amount was paid at the time of sale deed. Defendant no.2 is also resident of the same village.

This court has considered the submissions.

As regards argument of learned counsel that the payment of sale consideration has not been proved, it may be noted that Tej Ram, the owner of the property has not stepped into the witness box and denied that fact. In the registered sale deed receipt of entire sale consideration is admitted and specifically recorded. Tej Ram has never challenged the sale deed on the ground that he has not paid the amount of sale consideration. He has never made any complaint to the police or any other authority for complaining non-payment of the sale consideration.

As regards argument of learned counsel for the respondent that once the agreement to sell is proved, the decree for specific performance of the agreement to sell has to follow, is erroneous because Section 20 of the Specific Relief Act, 1963 gives discretion to the Court as to whether to pass a decree for specific performance in the facts and circumstances of the case or not. It is well settled that the decree for specific performance of the agreement to sell is to be granted based upon sound judicial principles and after taking into consideration the facts of the case.

Next contention of learned counsel that defendant no.2 is not proved to be bonafide purchaser, has some substance, however, the weakness in the case set up by the defendant cannot be made basis to grant relief of specific performance of the agreement to sell in favour of the plaintiff. No doubt, defendant no.2-appellant in an effort to prove that he is a bonafide purchaser has tried to set up a prior agreement to sell in his favour dated 18.06.1997 but failed to prove that. However, keeping the fact that the plaintiff and defendant no.1 are cousins and defendant no.2 is not related to them, correctness of sale deed executed in favour of defendant no.2 by defendant no.1 cannot be doubted.

Next argument of learned counsel that defendant has failed to examine any independent witness is also to be noticed and rejected particularly in view of the fact that execution of the registered sale deed in favour of defendant no.2 -appellant is proved on file.

As regards argument of learned counsel for the respondent that the plaintiff had filed a suit for injunction on 13.03.1999 is concerned, it may be noted that the suit was filed after the execution and registration of the sale deed dated 11.03.1999. Hence, that suit for injunction does not

advance the case of the plaintiff.

Learned counsel for the respondent in the last submitted that defendant no.2 is also resident of the same village. The court is required to decide the civil suit on preponderance of evidence. In the present case, on the one side plaintiff and defendant no.1 are cousins whereas on the other side defendant no.2-appellant is a co-villager. In normal circumstances, the cousins inter-se are not likely to play fraud or cheat each other while pitted against a co-villager.

Keeping in view the aforesaid discussion, the judgments passed by the courts below granting specific performance of the agreement to sell are set aside and substituted with a decree for refund of the earnest money along with interest @ 12% per annum from the date of the agreement to sell till recovery against defendant no.1.

The regular second appeal is allowed.

C.M.No.2615-2014

Application under Order 41 Rule 27 of the Code of Civil Procedure is dismissed as not pressed.

March 06, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No