

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

RSA No.5284 of 2016 (O&M)

Date of decision:03.04.2019

Jag Mohan Chauhan

... Appellant

Vs.

Sunder Lal Sharma and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Aditya Jain, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Appellant-defendant no.3 is in regular second appeal alleging himself to be bonafide purchaser, has not been successful in a suit seeking specific performance of the agreement to sell before the trial Court and Lower Appellate Court.

Respondent no.1/plaintiff filed the suit for specific performance of the agreement to sell dated 28.4.2006 in respect of an agricultural land measuring 14 kanals 12 marlas agreed to be sold at the rate of Rs.5.00 lakhs per acre on payment of Rs.2,75,000/- as earnest money fixing the target date 31.7.2006. It was alleged that defendant did not come forward on the stipulated date and on perpetual requests did not perform the part of the contract. Even the legal notice dated 02.08.2006 of no avail, ultimately, the suit was filed on 23.02.2007.

Defendant No.1 earlier appeared himself and during the

pendency of suit expired and represented by legal representatives and admitted the agreement to sell but alleged that target date was 27.07.2006 and not 31.07.2006, nor received a sum of Rs.2,25,000/- as part of the remaining sale consideration. The receipt dated 22.06.2006 regarding the payment of said amount was false.

During the pendency of suit, vide order dated 07.12.2011, defendant no.2 was impleaded as party and on 23.08.2012, trial Court struck off the defence of defendant no.2 as she failed to file her written statement and thereafter, defendant no.2 was proceeded against ex parte. Vide order dated 12.11.2013, defendant no.3 was impleaded as party.

The plaintiff proved the agreement to sell through the testimony of five witnesses and brought on record Ex.P1 to Ex.P11 including the affidavit of the plaintiff regarding his presence before the office of Sub Registrar. On the other hand, defendant examined two witnesses and closed the evidence.

Mr. Aditya Jain, learned counsel appearing on behalf of the appellant submitted that PW1-Ajay, and PW3-Devender attesting witnesses did not prove the agreement to sell, intention or receipt of the earnest money. The appellant-defendant no.3 had acquired the title by virtue of the sale deed and did not have the knowledge of the agreement. Neither the plaintiff was ready and willing as the suit was filed almost six months after the legal notice.

I am afraid the aforementioned arguments are not sustainable as the sale in favour of the appellant is hit by lis pendens as it was during the

pendency of the suit. The readiness and willingness has been proved through the testimony of PW1 -Ajay, PW4-Surender Singh Yadav and PW5-Satyaveer Sharma, drafter. The findings of fact and law cannot be said to be suffering from illegality and perversity.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 03, 2019
savita

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