

RSA No. 4166 of 2017 (O&M)

Date of Decision:08.07.2019

VIJAY SINGH AND OTHERS

...Appellants

Versus

NARENDER KUMAR AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. G.S. Gandhi, Advocate
for the appellants.

DEEPAK SIBAL, J. (ORAL)

Respondents No.1 and 2 filed a suit seeking therein a decree of possession by way of specific performance of agreement to sell dated 21.09.1991 with regard to the land detailed and described in the plaint (for short-the suit property).The case set up by respondents No.1 and 2 was that the predecessor-in-interest of respondent No.3(i) to (ix)-Shaitan Singh was owner in possession of the suit property. Through agreement to sell dated 21.09.1991 he had agreed to sell the suit property to respondents No.1 and 2. In pursuance to such agreement, earnest money of ₹30,000/-was paid by respondents No.1 and 2 to Shaitan Singh and it was agreed that the sale deed shall be executed on or before 21.03.1992. However, 21.03.1992 being a holiday, on 20.03.1992 respondents No.1 & 2, along with balance sale consideration of ₹53,437.50, went to the office of the Sub Registrar and waited for the entire day but Shaitan Singh did not come present. Subsequently, respondent No.1- Narender Kumar again went to the office of Sub Registrar on 23.3.1992 and waited for the whole day but on that day also Shaitan Singh did not come present. Thereafter,

respondents No.1 and 2 met Shaitan Singh and requested him to execute the sale deed in their favour. It was then that Shaitan Singh disclosed to them that vide sale deed dated 11.12.1991 he had sold the suit property to the appellants and respondents No.4 and 5. In these circumstances, respondents No.1 and 2 filed the aforementioned suit.

On being put to notice, Shaitan Singh appeared before the Trial Court and admitted the execution of agreement to sell dated 21.09.1991. However, he denied that respondents No.1 and 2 remained ready and willing to perform their part of the contract. He further denied that respondents No.1 and 2 visited the office of the Registrar on the day when the sale deed was to be executed. In fact, Shaitan Singh submitted that he had visited the office of Sub Registrar on 21.3.1992 but on that day, the office of Sub Registrar was closed. Shaitan Singh further submitted that respondents No.1 and 2 were in need of money and therefore, they sought refund of the earnest money paid by them to Shaitan Singh, which request of their was acceded to by him. After refunding the earnest money to respondents No.1 and 2, which was done in the presence of the appellants, Shaitan Singh executed the sale deed qua the suit property in favour of the appellants and respondents No.4 and 5.

Appellant No.1, in his separate written statement, took the plea that he was a *bona fide* purchaser for valuable sale consideration and therefore, sought dismissal of respondents No.1 and 2's suit. He further stated that it was in his presence that Shaitan Singh had refunded the earnest money to respondent No.1.

The late husband of appellant No.2-Vijender Singh as also Ajay Singh, who were defendants No.3 & 4 in the suit, through their written statement denied the execution of the agreement to sell dated 21.09.1991 and

contested respondents No.1 and 2's suit.

The Trial Court, after sifting the evidence, which had come on record, decreed respondents No.1 and 2's suit. The appellants challenged the aforesaid judgment and decree passed by the Trial Court by way of an appeal on the dismissal of which, the present Regular Second Appeal has been instituted.

Learned counsel for the appellants has raised only one issue before this Court which is that the execution of agreement to sell dated 21.09.1991, on the basis of which respondents No.1 and 2 instituted their suit, had not been proved and therefore, both the Trial Court as also the Appellate Court erred in decreeing their suit.

The above submission does not cut any ice with me.

Defendant No.1 to the suit-Shaitan Singh, who was the predecessor-in-interest of respondent No.3(i) to (ix) and owner of the suit property, in his written statement admitted the execution of agreement to sell dated 21.09.1991 between himself and respondents No.1 and 2/plaintiffs. He further admitted to have received ₹30,000/- from respondents No.1 and 2 as earnest money. Rather, the case set up by him was that after entering into the aforesaid agreement, respondents No.1 and 2 were in need of money and therefore, they asked for refund of the earnest money which request of theirs was acceded to by him. Resultantly, he refunded the amount of ₹30,000/- to respondents No.1 and 2 which was in the presence of the appellants and thereafter executed the sale deed qua the suit property in favour of the appellants. Thus, the agreement to sell dated 21.09.1991 was admitted by its executor-Shaitan Singh who was also the appellant's vendor.

The case set up by Shaitan Singh that he had refunded the earnest

money to respondents No.1 and 2 was concurrently disbelieved by both the Trial Court as also the First Appellate Court on the ground that neither Shaitan Singh had produced any receipt with regard to the refund of earnest money nor any document with regard to the cancellation of agreement to sell dated 21.09.1991 which he had admittedly executed. No interference in such findings is called for.

The plea of the *bona fide* purchasers raised by the appellants is also found to have been rightly rejected by both the Trial Court as also the First Appellate Court for the reason that as per Shaitan Singh he executed the agreement to sell dated 21.9.1991 in favour of respondents No.1 & 2 and later, on their request, refunded the earnest money paid by respondents No.1 & 2 in the presence of appellant No.1 and then executed the sale deed in favour of the appellants. Meaning thereby, that at the time of execution of the sale deed in favour of the appellants, the appellants had knowledge of the agreement to sell dated 21.09.1991 between respondents No.1 & 2 and Shaitan Singh.

In view of the above, no interference is warranted with the concurrent findings of fact returned by both the Trial Court and the first Appellate Court.

No question of law much less any substantial question of law is also found to arise in the present appeal.

Dismissed.

(DEEPAK SIBAL)
JUDGE

July 08, 2019

Jyoti-1 Whether speaking/reasoned Yes/No Whether Reportable Yes/No