

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

RSA No.484 of 2017 (O&M)

Date of decision:17.01.2019

Lakhmi Chand (deceased) through LRs

... Appellant

Vs.

Badlu Ram Malik and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. K.C.Rajput, Advocate
for the appellant.

AMIT RAWAL J.

C.M.No.2499-C of 2017

The application is allowed subject to all just exceptions. The correct grounds of appeal is taken on record.

RSA No.484 of 2017 (O&M)

The present regular second appeal is directed against the concurrent findings of facts and law whereby suit of the respondent-plaintiff for specific performance of the agreement to sell, has been decreed.

The plaintiff instituted the suit against LRs of defendant No.1 and 2. It was alleged that defendants no.1 and 2 alongwith Mai Chand and Inder sons of Sher Singh entered into agreement to sell 23.04.2003 in respect of land measuring 67 kanals 13 marlas in equal share pertaining to khewat no.335, khatoni no.459, rect. & killa nos.19/23-24-25/1, 38/3-4-5/1-6/2-7-8-13-14-15/1 kittas 12 situated within the revenue estate of village

Sampla District Rohtak at the rate of Rs.16 lakhs per acre i.e. Rs.1,35,30,000/- against the payment of Rs.12.00 lakhs as earnest money which was duly thumb marked on the same date. The stipulated date for execution and registration of the sale deed was 22.07.2004. It was attested by two attesting witnesses namely Dilbag and Kuldeep. The plaintiff in part performance of the agreement to sell had taken the possession of suit land and thereafter made the payments on 01.08.2003, 1.11.2003, 05.12.2003 and 03.09.2004 of Rs.1,50,000/-, Rs.1.00 lakh Rs.3,60,000/- and Rs.35,00,000/-, respectively.

The defendants appointed Naresh Kumar son of Mai Chand as Attorney to execute the sale deed vide attorney dated 15.12.2003. On 03.09.2004, the defendants extended the time for execution and registration of the sale deed in respect of suit land upto 03.03.2005. It was further averred that out of four transferors, Mai Chand and Inder executed sale deed of their shares i.e ½ share in suit land on receipt of sale consideration amounting to Rs.67,65,000/- by adjustment of Rs.26,55,000/- already received by them as earnest money. Defendants No.1 and 2 also sold their land measuring 8 kanals 6 marlas on receipt of Rs.1,99,000/- as part payment of sale consideration from the plaintiff vide registered sale deed dated 3.9.2004 and the remaining land measuring 25 kanals 10 marlas which was to be sold on receipt of balance sale consideration of Rs.39,11,000/-. The plaintiff had always been ready and willing to perform the part of contract. Even the legal notice dated 14.02.2006 was sent, therefore, they came to know that defendants no.1 and 2 executed some

wrong and illegal sale deeds detailed in para 11 of the plaint in favour of defendants no.3 to 17. They were not bonafide purchasers as had the knowledge of agreement to sell.

Defendants no.1 and 2 filed a joint written statement and raised numerous preliminary objections qua locus standi, maintainability and estoppel etc. On merit, it was averred that plaintiff was working as coloniser and he was in league with Naresh son of Mai Chand and denied the execution of the agreement to sell and his extension to be illegal, void and not admissible, much less receipt of earnest money. The defendants admitted to have sold away the area covered by the sale deeds to defendants no.3 to 10.

Defendants no.3 to 10 filed joint written statement and counter claim and denied the agreement to sell, its extension much less receipt of earnest money and claimed themselves to be bonafide purchasers for valuable consideration as they did not have the knowledge of the agreement to sell nor their vendors ever informed about the same. The alleged collusion amongst Mai Chand and Inder vis-a-vis plaintiff was also attributed.

Defendants no.11,12, 13 and 17 also filed joint written statement and opposed the suit and similarly, defendants no.14 to 16.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether defendants no.1 and 2 alongwith their brothers Mai Chand and Inder sons of Sher Singh had duly executed

agreement to sell dated 23.4.2003 with regard to the property in dispute for a sale consideration of Rs.1,35,30,000/- in favour of plaintiff.?OPP

2. Whether the plaintiff was and is still ready and willing to perform his part of contract?OPP

3. If issues no.1 and 2 are decided in favour of the plaintiff, whether the plaintiff is entitled for specific performance of the contract/agreement dated 23.04.2003?OPP

4. Whether the subsequent sale deeds in respect of the suit land executed by defendants no.1 and 2 in favour of remaining defendants are illegal, null and void?OPP

5. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?OPP

6. Whether the plaintiff has no cause of action to file the present suit?OPD

7. Whether the suit of the plaintiff is not maintainable in the present form?OPD

8. Whether the suit of the plaintiff is not properly valued for the purposes of court fees and jurisdiction?OPD

9. Whether the suit is bad for non-joinder of the necessary parties?OPD

10. Whether the suit of the plaintiff is barred by limitation?OPD

11. Whether the defendants no.3 to 10 are entitled to relief of

decree of permanent injunction and mandatory injunction as prayed for?OPD

12. Whether counter claim is not maintainable?OPP

13. Relief.”

The plaintiff in support of the aforementioned averments examined the following witnesses:-

PW1	Badlu Ram, plaintiff
PW2	Subhash Cahnder Sangwan, document writer
PW3	Pawan Kumar, Record Keeper, Registrar Office
PW4	Naresh Kumar son of Mai Chand
PW5	Kuldeep son of Dariyao Singh
PW6	Mai Chand son of Sher Singh

and brought on record Ex.P1 to 113, Ex.PA & Ex.PB, Ex.PX and Mark A to H, i.e., jamabandies, agreement to sell, sale deeds, mutations, legal notice, postal receipts, registered A.Ds., power of attorney, death certificate of Dilbag Singh, and receipts.

On the other hand, defendants examined DW1 to DW18 and brought on record various documents i.e. jamabandies, receipts, mutations, sale deeds and photographs, and receipts of photo studio.

On the basis of evidence, the trial Court decreed the suit and the appeal laid before the Lower Appellate Court was dismissed.

Mr. K.C.Rajput, learned counsel appearing on behalf of the appellant-defendants submitted that time was the essence of agreement and it never evaporated but the plaintiff did not file the suit on time. There was

collusion amongst the co-owners and vendors as the son of other vendor Mai Chand was in league with Naresh. Plaintiff miserably failed to prove additional sum of Rs.35.00 lakhs in cash to all the four vendors. Both the Courts below have gravely erred in not applying mind that suit had abated on the death of Lakhmi Chand, one of the defendants on 10.10.2013. The benefit of Section 53-A of Transfer of Property Act, could not have been availed by the plaintiff and agreement to sell in the absence of registration, since possession was handed over, was not permissible in evidence and discretionary relief in such cases could not have been granted. The agreement to sell could not have been remained in existence till infinity. Since the possession had already been passed on to the subsequent vendees, the discretionary relief should not have been granted. The sale deed dated 15.12.2003, Ex.P30 to Ex.P34 and 03.09.2004, Ex.P35 was without attesting witnesses or reference to the agreement to sell Ex.P2. The plaintiff deplorably failed to prove his case. Subsequent sale deed revealed that rate was higher more than the rate agreed and therefore, it was not possible to sell the land at the throw away price and thus, urged this Court for setting aside the findings under challenge.

I have heard the learned counsel for the appellant-defendants, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Rajput, for, plaintiff has proved the execution of the agreement to sell through the testimony of one of the attesting witnesses, PW5-Kuldeep. DW8-Subhash Chander Sangwan, witness of the defendants admitted that

they were having the knowledge of the agreement to sell and had told to the subsequent vendees, thus, cannot be said to be bonafide purchasers. The other, co-owners, i.e. Transferors and members of the agreement to sell i.e. one of the vendors, Mai Chand had appeared and admitted the execution of the agreement to sell. The other vendors have already performed part of the agreement but the present appellants refused to get the sale deed executed, resulted into service of legal notice and institution of suit. Subsequent purchaser denied their presence at the time of execution and registration of the sale deed but failed to place on record any reasonable and genuine inquiry before the purchase of the property and therefore, could not take the benefit of provisions of Section 41 of the Transfer of Property Act. DW9-Yogesh Kumar in cross-examination stated that he was aware of the agreement to sell entered into between the parties and shared this information with subsequent purchasers. Ex.P2 and Ex.P3 are not two distinct agreements rather Ex.P3 is merely continuation of agreement Ex.P2 as it deals with extension of date for execution and registration of the sale deed. PW2, deed writer has proved execution of the agreement to sell. The onus to prove the thumb impression obtained by fraud was heavily upon the defendants but they failed to discharge. Neither the legal notice dated Ex.P78 and Ex.P83, receipt of earnest money was controverted. Out of 16 (sixteen) purchasers only 8 (eight) had appeared as defence witnesses and 8 (eight) remained absent. All these factors weighed in the mind of the Courts below to belie the plea of plaintiff.

The arguments of Mr. Rajput are not able to bring the case within the realm of illegality and perversity to form the different opinion than the one arrived at by the Courts below.

The regular second appeal is dismissed.

January 17, 2019

savita

(AMIT RAWAL)
JUDGE

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