

RSA No.4844 of 2017 (O&M)

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

**RSA No.4844 of 2017 (O&M)
Date of decision:21.02.2019**

Jai Parkash

... Appellant

Vs.

Rajbir and others

... Respondents

RSA No.4845 of 2017 (O&M)

Jai Parkash

... Appellant

Vs.

Rajbir and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashwani Gaur, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing Nos.4844 and 4845 of 2017 preferred by the appellant-plaintiff, i.e. subsequent vendee and vendor against the judgment and decree of the Lower Appellate Court which dismissed the suit for specific performance of the agreement to sell dated 11.09.2007 and also laid challenge to the sale deed dated 28.8.2009 .

It was alleged that defendant no.1 agreed to sell 10 biswas land i.e. 10/247 share out of 12 bighas 7 biswas to the plaintiff for a total sale consideration of Rs.2.00 lakhs which was paid at the time of execution and registration of the sale deed. Thereafter, raised the boundary wall with

“pucca bricks” upto 4-5 feet. The agreement to sell contained the stipulation that as and when the 'ban' imposed by the Government with regard to registration of the sale deed was over, the vendor would execute the sale deed within a period of one month. However, during the subsistence of the agreement to sell, vide sale deed dated 28.8.2009, defendant No.1 sold the property to defendant no.2 through attorney defendant no.3.

The defendants opposed the suit and raised numerous preliminary objections. On merit, boundaries and dimensions of the suit property were denied but stated that after the ban was lifted, the plaintiff did not come forward for execution and registration of the sale deed in the office of Sub Registrar, nor the plaintiff ever contacted for execution of the sale deed. The suit was stated to be without any cause of action. The actual physical possession was also denied. Defendant no.2 claimed himself to be a bonafide purchaser under Section 41 of Transfer of Property Act.

The plaintiff in support of the evidence examined eight witnesses, whereas, defendants examined five witnesses and brought on record various documents, i.e. agreement to sell, jamabandis, receipts, general power of attorney.

The trial Court on the basis of evidence brought on record decreed the suit but in appeal preferred by the vendor, judgment and decree has been set aside.

Learned counsel appearing on behalf of the appellant submitted that time was not essence of the agreement to sell in view of the stipulation contained therein as there was bar by the Government with regard to

execution and registration of the sale deed. This fact had not been denied by the defendants, much less, repeated requests did not yield any result. In such circumstances, readiness and willingness was subsisting, thus, the discretionary relief could have been granted, particularly, when defendant no.1 did not cancel the agreement to sell.

I am afraid the aforementioned arguments are not sustainable as the suit was filed in 2011 i.e. after almost two years of execution of the sale deed. It is not comprehensible as to why the plaintiff would approach defendant no.1 particularly when there is specific pleading in the plaint that he had the knowledge of the sale deed. In such circumstances, readiness and willingness was conspicuously wanting. Even the suit for recovery of alternative relief had become time barred. This is what has been noticed by the Lower Appellate Court dismissing the suit in toto.

As an upshot of my findings, arguments of Mr. Gaur, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Lower Appellate Court. No substantial question of law arises for adjudication of the present appeals.

Resultantly, the appeals are dismissed.

(AMIT RAWAL)
JUDGE

February 21, 2019
savita
Whether Speaking/Reasoned
Whether Reportable

Yes/No

Yes/No