

In the High Court for the States of Punjab and Haryana at Chandigarh

RSA-5586-2017

Date of Decision: March 13, 2019

Rajender Singh (deceased) through LRs and another

... Appellants

Versus

Veer Bhan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anil Ghanghas, Advocate,
for the appellants.

Amit Rawal, J. (Oral)

The appellants-plaintiffs who have not been successful in getting the relief under Section 20 of the Specific Relief Act, confined to the alternative relief of refund of Rs.11,75,000/- along with interest @ 18% per annum in respect of the suit property. It was stated that plaintiffs had entered into an agreement with defendant no.1 on 05.09.2006 in respect of land measuring 55 kanals 2 marlas @ Rs. 2 lakhs per acre i.e. Rs.13,77,500/- against the payment of Rs. 7 lakhs as earnest money. It was alleged that the plaintiffs had on various dates paid a sum of Rs. 1,80,000/-, Rs. 2,95,000/- in all Rs.11,75,000/- from 05.09.2006 to 22.11.2006. Stipulated date was 04.04.2007. Plaintiffs appeared but the defendant did not come forward. However, later on acquired the knowledge that vide sale deed dated 09.04.2007 sold the property to defendant no.2. Legal notice dated 01.05.2007 was served, resulting into filing of the suit in July, 2007.

Defendant no.1 appeared and opposed the suit and stated that

the alleged agreement stated to be fraud, misrepresentation and denied its execution. It was stated to be a loan transaction. Sale deed was preceded by an agreement dated 21.04.2006. Defendant no.2 filed separate written statement taking the plea of *bona fide* purchaser. It was alleged that land was mortgaged with one Manphul stood redeemed by defendant no.1 after taking the money from defendant no.2. In such circumstances, the agreement to sell dated 21.04.2006 was entered.

During the pendency of the suit, defendant no.1 was proceeded ex parte. On the basis of the application under Order 1 Rule 10, defendant no.3 was allowed to be impleaded and disclosed to have purchased the property from Pardeep Kumar to whom defendant no.2 – Kitabo Devi sold the property vide sale deeds dated 11.04.2008 and 14.07.2010.

Plaintiffs in support of evidence, examined five witnesses himself as PW1, PW-2 Jai Singh, the alleged witness of the agreement, PW-3 Ajay Gupta son of Late Sh. Subhash Chander Gupta, scribe of the agreement, plaintiff again appeared himself as PW4, PW-5 Hoshiyar Singh. Defendants examined DW1 Balbir Singh, Clerk, who brought the summoned file titled Pardeep Vs. Partap Singh, DW-2 Om Parkash, DW-3 Satpal, Deed Writer, DW-4 Om Parkash, witness of sale deed executed by Pardeep in favour of defendant o.3, DW-5 Ravinder Aggarwal, Advocate, DW-6 defendant no. 3, DW-7 defendant no.2, DW-8 Bhatnagar, Handwriting and Finger Prints Expert.

Mr. Anil Ghanghas, learned counsel, appearing on behalf of the appellants submitted that once the trial court disbelieved the story of propounded agreement dated 21.04.2006 in respect of the impugned sale deed, the defendant No.2 could not be said to be a *bona fide* purchaser.

Non-impleadment of Pardeep Kumar was not material as the property had been sold to Defendant no.3. Defendant no.1 was proceeded ex parte. In the absence of any contrary evidence qua the signature on the agreement to sell, much less, proving of the payment as well as intention of the parties readiness and willingness was in existence. The sale deed in favour of Pardeep Kumar and defendant no.3 during the pendency of the suit would be hit by *lis pendence*. Defendant no.2 did not lead any evidence to show that the impugned sale deed was out of some consideration, therefore, the discretionary relief was inevitable.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit, for on 22.09.2006 substantial amount of Rs. 11,75,000/- was paid against the total consideration of Rs. 13 lakhs and odd amount. No explanation has come forward to keep the stipulated dated as 04.04.2007. The suit was also liable to be dismissed for non-impleadment of proper party as Pardeep Kumar had acquired the right and title in the property and further sold it. Defendant no.1 having been proceeded *ex parte* is also pointer towards washing of the hands from liability and his appearance may have been fatal to the case of either of the parties. The intention to purchase and sell the property remained mystery.

In view of such circumstances, the finding of fact of Courts below directing the refund of the money by declining the discretionary relief cannot be said to be illegal and perverse.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this

Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

March 13, 2019
vkd

(Amit Rawal)
Judge

Whether reasoned / speaking : Yes
Whether reportable : No