

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

RSA No.5343 of 2019(O&M)

Date of Decision: November 20, 2019

Sarvjit Kaur @ Sarbjit Kaur

...Appellant

Versus

Baldev Singh and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Paramjit Singh Jammu, Advocate
for the appellant.

JAISHREE THAKUR, J. (Oral)

1. This is a regular second appeal that has been filed by the appellant-defendant No.2 (henceforth called 'the appellant') seeking to challenge the judgment and decree dated 20.01.2018 passed by the lower court, decreeing the suit of respondent No.1-plaintiff (henceforth called 'respondent No.1') as well as judgment and decree dated 01.10.2019 passed by the first Appellate Court whereby, the appeal filed by the appellant was also dismissed.

2. Briefly, the facts of the case are that respondent No.2-defendant No.1 (henceforth called 'respondent No.2') entered into an agreement to sell dated 16.09.2016 with respondent No.1 to sell the suit land for a total consideration of ₹ 2,70,000/- in the presence of witnesses and received an amount of ₹ 50,000/- as earnest money. The remaining amount was agreed

to be paid on 25.04.2017, the date fixed for getting the sale deed executed and registered by respondent No.2 in favour of respondent No.1. It was claimed that the transfer deed, bearing No.2376 dated 28.09.2016, regarding the suit property executed by respondent No.2 in favour of the appellant is wrong, null and void, result of fraud and liable to be set aside and mutation sanctioned on the basis of the said transfer deed is also wrong and liable to be set aside. It was alleged that the appellant wants to alienate the suit land to some other person forcibly and illegally in order to cause loss to respondent No.1. On these basis, respondent No.1 sought the decree of possession by way of specific performance of agreement to sell dated 16.09.2016 and also sought the relief that the transfer deed bearing No.2376 dated 28.09.2016 executed by respondent No.2 in favour of the appellant be set aside, besides the revenue record showing the appellant as owner of the suit land.

3. Upon notice, respondent No.2 appeared and filed her written statement, in which it has been admitted that respondent No.2 executed an agreement to sell regarding the suit property in favour of respondent No.1 and received a sum of ₹ 50,000/- as earnest money from respondent No.1 on 16.09.2016. It was stated that thereafter, a dispute arose between brothers of the husband of respondent No.2 and they caused serious injuries on the person of respondent No.2. It was averred that the appellant is the real sister of respondent No.2. On account of agreement having been entered by respondent No.2 with respondent No.1, they cancelled the agreement to sell in question, and thereafter, a settlement was arrived at between respondent No.2 and the appellant. It was submitted that respondent No.2 gave ₹

50,000/- to Jagsir Singh to return it to respondent No.1, as the agreement was carried out between respondent No.2 and respondent No.1 on the intervention of said Jagsir Singh. It was agreed that the said amount of ₹ 50,000/- would be returned to respondent No.2 and in case, he demands double of the earnest money, then the remaining ₹ 50,000/- would be paid by the appellant to respondent No.1. It was averred that respondent No.1 was having the knowledge of the transfer of land by respondent No.2 in favour of the appellant, as such, it cannot be said that the transfer of property by way of transfer deed bearing No.2376 dated 28.09.2016 is the result of fraud and misrepresentation. It was further claimed when respondent No.2 agreed to receive the amount of ₹ 50,000/- which was advanced as earnest money, the agreement in question stood cancelled.

4. Upon notice, the appellant appeared and filed her written statement and denied that respondent No.2 ever executed any agreement to sell regarding the suit land in favour of respondent No.1 and if there is any such agreement, it is result of fraud and liable to be ignored. It was averred that respondent No.2 and the appellant are real sisters and their husbands are real brothers. In a family settlement, respondent No.2 executed the release deed bearing No.2376 dated 28.09.2016 in favour of the appellant and possession of the suit property was also handed over to the appellant. It was claimed that release deed is legal, valid and binding upon respondent No.1.

5. From the pleadings of the parties, issues were framed and evidence was led by the parties. On appreciating the evidence, the lower court decreed the suit of respondent No.1 and directed respondent No.2 to

execute and get registered the sale deed in favour of respondent No.1 regarding the suit land as per agreement to sell dated 16.09.2016 with a direction to hand over the possession to him, subject to the payment of the balance sale consideration by respondent No.1 in favour of respondent No.2 within three months. The lower court further set aside the transfer deed bearing No.2376 dated 28.09.2016, while restraining the appellant from alienating the suit property or creating any charge over the suit property on the basis of said transfer deed. Aggrieved, the appellant filed an appeal before the first Appellate Court, which was also dismissed. Now, the judgments and decrees passed by the courts below have been assailed in this regular second appeal.

6. Counsel appearing on behalf of the appellant argues that both the courts below have ignored the fact that the agreement to sell in question was cancelled by respondent No.2 with the consent of respondent No.1 and earned money was also returned by respondent No.2 to respondent No.1. It is contended that the lower court has wrongly held that respondent No.1 was ready and willing to perform his part of the contract. It is also submitted that the courts below have ignored the legal provisions about the overriding effect of a title deed, as compared to an agreement to sell.

7. I have heard counsel for the appellant and with his assistance, have gone through the case file.

8. The lower court, while decreeing the suit of respondent No.1, has observed that respondent No.1 has been able to prove the agreement to sell, along with his readiness and willingness to perform his part of the contract whereas, respondent No.2 has failed to prove the cancellation of

agreement to sell and the appellant has failed to prove the plea of bona fide purchaser. The findings given by the lower court were affirmed in appeal by the first Appellate Court.

9. In the present case, so far as agreement to sell dated 16.09.2016 executed by respondent No.2 in favour of respondent No.1 is concerned, first of all, respondent No.2 has specifically admitted in her written statement that she executed the said agreement to sell regarding the suit property in favour of respondent No.1 and received an amount of ₹ 50,000/- as earnest money. Secondly, the agreement to sell dated 16.09.2016 has also been proved on record by scribe PW2 Tarachand Sharma, Advocate and the attesting witness PW5 Balbir Singh. As far as question of readiness and willingness of respondent No.1 is concerned, in his plaint as well as in his affidavit tendered into evidence, respondent No.1 has pleaded and deposed to this effect. On the other hand, respondent No.2 has nowhere denied in her written statement that respondent No.1 was not ready and willing to perform his part of the contract. In this way, respondent No.1 has discharged the burden that lies upon him.

10. So far as plea of cancellation of agreement to sell, as taken by respondent No.2 is concerned, the stand of respondent No.2 was that the agreement to sell was cancelled by respondent No.1, as he became ready to receive back the earnest money in the presence of Jagsir Singh and respondent No.2 made the payment of earnest money of ₹ 50,000/- to Jagsir Singh, to return it to respondent No.1. Besides this, respondent No.2 has also stated that it was agreed between her and respondent No.1 that in case, respondent No.1 claims double amount of the earnest money, then in such

an eventuality, remaining amount of ₹ 50,000/- would be paid by the appellant to respondent No.1. However, no document to this effect has been produced on record by respondent No.2 nor said Jagsir Singh was examined as a witness to prove this fact. Regarding the plea of bona fide purchaser taken by the appellant, she failed to prove on record that respondent No.2 transferred the suit land in her favour for a valid consideration. The appellant also did not take such plea of passing of valid consideration either in her written statement or in her affidavit tendered into evidence and even DW3 Lakhvir Singh, Nambardar did not support the version of the appellant to this effect. Apart from this, interestingly, the family settlement which was produced on record as Mark-A, did not find mentioned the suit property. Counsel appearing on behalf of the appellant has miserably failed to point out any illegality in the findings returned by the courts below.

11. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-defendant No.2, which has no merit.

12. Dismissed.

November 20, 2019

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No