

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

RSA No. 14955 of 2018 (O&M)

Date of decision : January 24, 2019

Suresh Kumar

.....Appellant

Versus

Daryao Singh and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vineet Chaudhary, Advocate
for the appellant.

LISA GILL, J.

Appellant – defendant is aggrieved of judgment and decree dated 09.03.2017 passed by the learned Additional Civil Judge (Senior Division), Karnal whereby suit filed by the respondent – plaintiff for specific performance for agreement to sell dated 12.07.2012 has been decreed as well as judgment and decree dated 23.10.2018 passed by the learned Additional District Judge, Karnal upholding the same.

Brief facts necessary for adjudication of the case are that as per averments in the plaint, plaintiff – Daryao Singh (respondent No. 1 in the present appeal) filed a suit for specific performance of agreement dated 12.07.2012 stated to have been executed between the present appellant – Suresh Kumar (defendant No. 1 in the plaint) and the plaintiff (respondent No. 1). Agreement to sell dated 12.07.2012 was executed for a consideration of ₹5,00,000/-. It was further stated that a sum of ₹3,00,000/- was received as earnest money by appellant/defendant No. 1. It was agreed that sale deed would be executed and registered on receipt of balance sale consideration and in case the defendant failed to perform his part of the contract, the plaintiff – respondent would be entitled to get the sale deed registered

through Court and defendant would be liable to pay double the amount of the earnest money. Readiness and willingness on the part of the plaintiff - respondent was pleaded while submitting that defendant No. 1 was not ready and willing to perform his part of the contract. Plaintiff remained present before the office of Sub Registrar alongwith the balance sale consideration but defendant No. 1 did not turn up. Legal notice was issued by the plaintiff on 17.06.2013 but defendant No. 1 neither executed the sale deed nor returned double the earnest money. It is further pleaded that defendant No. 1 sold the property in dispute in favour of defendant No. 2 vide sale deed dated 24.06.2015 for ₹2.25 lakhs and mutation was sanctioned on the basis of the sale deed. Sale deed in favour of defendant No. 2 was hit by the doctrine of lis pendens. Hence, the present suit.

Defendant No. 1 resisted the suit while taking various preliminary objections. Averments in the plaint were controverted. It was stated that he never entered into an agreement to sell dated 12.07.2012 with the plaintiff nor received a sum of ₹3 lakhs as earnest money. It was further pleaded that agreement to sell dated 12.07.2012 is a forged and fabricated document.

Separate written statement was filed by defendant No. 2 while submitting that she is a bonafide purchaser of the suit property and is in actual physical possession over the suit property. It was pleaded that she had no knowledge of any agreement between the plaintiff and defendant No. 1. Dismissal of the suit was prayed for.

Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiff is entitled to decree for specific performance of contract dated 12.07.2012 subject matter of the present suit alongwith consequential relief of permanent injunction restraining the defendant from alienating the suit property as prayed for?OPP
1A. Whether sale deed no. 2344/1 dated 24.06.2015 and mutation no. 3541 are illegal, null and void and not binding on the rights of the plaintiff?OPP
2. Whether the suit of the plaintiff is not maintainable?OPD
3. Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD
4. Whether the plaintiff has no locus standi to file the present suit?OPD
5. Whether the suit is not properly valued for the purposes of court fee and jurisdiction?OPD
6. Relief.

Evidence was led by both the parties.

Learned trial Court on considering the facts, circumstances and evidence on record concluded that the plaintiff successfully proved the execution of the agreement to sell dated 12.07.2012 (Ex.P1). Readiness and willingness on the part of the plaintiff to execute his part of the contract also stood proved. It was further concluded by the learned trial Court that defendant No. 2/respondent No. 2 to whom the property had been subsequently sold by the present defendant – appellant was not a bona fide purchaser for consideration. The property was admittedly sold for half the amount and possession thereof never conveyed to the alleged subsequent purchaser. It was held that defendant No. 2 (respondent No. 2 in this appeal) was not a bonafide purchaser of the property as projected and sale deed

dated 24.06.2015 in her favour was hit by the doctrine of lis pendens. Suit filed by the plaintiff was, accordingly, decreed directing appellant/defendant No. 1 to execute and register the sale deed within a period of three months after receipt of the balance sale consideration. Accordingly, suit filed by the plaintiff – respondent No. 1 was decreed. Appeal filed by the present appellant was dismissed by the learned Additional District Judge, Karnal vide judgment dated 23.10.2018.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned courts below have grossly erred in decreeing the suit filed by the plaintiff – respondent. Evidence on record does not prove that the agreement to sell dated 12.07.2012 was entered into between the defendant – appellant and the plaintiff. Ex.P1 is shrouded in suspicious circumstances. Moreover, it is the plaintiff who was not ready and willing to perform his part of the contract.

Learned counsel for the appellant relies upon the judgment of the Delhi High Court in **V.P. Arora versus Punjab National Bank 1992 (48) DLT 367** and the judgment of this High Court in **Narender Singh versus Krishan and others 2017 (3) RCR (Civil) 225** to urge that in case there is only one residential house with the judgment debtor, the same should not be attached. Learned counsel for the appellant submits that the appellant is ready and willing to return the amount, which is alleged to have been given to the appellant. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 09.03.2017 passed by the learned Additional Civil Judge (Senior Division), Karnal as well as judgment and decree dated 23.10.2018 passed by the learned Additional District Judge,

Karnal be set aside and suit filed by the plaintiff – respondent No. 1 be dismissed throughout.

I have heard learned counsel for the appellant and have perused the file as well as a photocopy of the record, which was furnished by learned counsel in Court today.

Plaintiff – respondent No. 1 pleaded that agreement to sell dated 12.07.2012 was entered into by the present appellant in respect to the plot/*bara* measuring 3 marlas as detailed in the plaint for a sum of ₹5 lakhs. ₹3 lakhs in cash was received by the appellant – defendant as earnest money and it was agreed that the sale deed would be executed on 10.06.2013. Plaintiff stepped in the witness box as PW1 and substantiated his stand. Ram Kumar (PW5) i.e. the attesting witness of the agreement to sell (Ex.P1) proved the execution of the agreement. PW3 Dr. Rekha Chaudhary Notary Public, who attested the agreement to sell and PW4 Neelam Gupta, Stamp Vendor of the stamp papers over which Ex.P1 was written have duly proved the case of the plaintiff. Receipt of ₹3 lakhs as earnest money by the defendant – appellant is duly proved on record. Defendant – appellant has denied having entered into the agreement to sell with the plaintiff. However, in his cross examination, he admitted his signatures on the agreement dated 12.07.2012, Ex.P1. It is matter of record that the photograph of appellant/defendant No. 1 is a scanned one and not affixed on the stamp paper at a later stage. Defendant – appellant has denied his signatures in the register of the Notary public as well as the stamp vendor but has not led any evidence to substantiate the said allegation. Presence of the plaintiff was got marked at the office of Sub Registrar as reflected in testimony of the plaintiff as well as that of PW2 Surender Kumar, Clerk of Tehsil Office,

Karnal. Affidavit Ex.PW2/A was also executed by the plaintiff for marking his presence in the office of Sub Registrar as per terms of the agreement to sell (Ex.P1).

Notice (Ex.P3) was duly served upon the defendant – appellant. Postal receipt Ex.P4 is on record. Though it is stated that reply to the legal notice was given, no such reply is available on record. Readiness and willingness on the part of the plaintiff to perform his part of the contract is duly proved on record.

Execution of the agreement to sell dated 12.07.2012 has been admitted by the defendant – appellant in so many words. There is no evidence on record to indicate that Ex.P1 is a fraudulent document or a result of any kind of forgery or misrepresentation.

Learned courts below have rightly held that defendant No. 2 – Jaya is not a bona fide purchaser of the property in question for consideration. At this juncture, it is relevant to note that no appeal has been filed by Jaya – defendant No. 2 before this court. It was pleaded by defendant No. 2 that she is a bona fide purchaser of the disputed property for consideration. She had no knowledge of the agreement to sell dated 12.07.2012 between the plaintiff and defendant No. 1. A peculiar fact to be noted, at this stage, is that property in question is stated to have been sold to Jaya - defendant No. 2 by the present appellant – defendant vide sale deed dated 24.06.2015 i.e. during the pendency of the suit for a sum of ₹2.25 lakhs i.e. even less than half of the agreed amount as per agreement to sell dated 12.07.2012 entered into between the plaintiff – defendant No. 1. Mutation No. 3541 was sanctioned on the basis of the sale deed. Passing of the consideration of ₹2.25 lakhs is not proved on record. DW2 in her cross

examination has admitted that she did not make any inquiry regarding the title of the property. She did not inspect the revenue record. DW2 was unable to give any details about the passing of the consideration amount. It is pertinent to note that DW1 in his cross examination stated that he sold the property in question to Jaya wife of Kuldeep vide sale deed dated 24.06.2015 for a sum of ₹2.25 lakhs. He further stated that the possession of the property was handed over at the time of the execution of the sale deed. However, it is to be noted that learned counsel for the appellant on a pointed query submits, on instructions from his client that possession of the property in question is still with him. It is, thus, apparent that observation of the learned Additional District Judge, Karnal to the effect that the appellant at the last moment got the property transferred in the name of Jaya for defeating the interest of the plaintiff is fortified. Lack of bonafides on the part of the appellant is also apparent from the offer of the appellant at this stage to return the amount in question, which is alleged to have been handed over to the appellant. I do not find any ground whatsoever to accept the argument raised by learned counsel for the appellant that the relief of specific performance of the agreement to sell in this case should not be allowed. The judgments relied upon by learned counsel for the appellant are not applicable to the facts and circumstances of this case as both of them relate to execution of money decrees qua the judgment debtors. Present is a suit for specific performance of an agreement to sell.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of

law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 09.03.2017 passed by the learned Additional Civil Judge (Senior Division), Karnal as well as judgment and decree dated 23.10.2018 passed by the learned Additional District Judge, Karnal, which calls for any interference by this Court in second appeal.

An application has been filed by the applicant/appellant under Order 33 Rule 1 CPC for filing this appeal as an indigent person while submitting that the appellant was declared an indigent person by the learned Additional District Judge, Karnal vide order dated 16.10.2018. Since the matter has been decided on merits, this application has been rendered academic. Application is, accordingly, disposed of.

Accordingly, this appeal is dismissed with no order as to costs.

(Lisa Gill)
Judge

January 24, 2019

rts

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No