

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

1. RSA-4998-2013 (O&M)
Date of decision : 15.01.2020

Bhim Singh

...Appellant

Versus

Sandeep Kumar and another

...Respondents

2. RSA-117-2014 (O&M)
Date of decision : 15.01.2020

Sardara Singh

...Appellant

Versus

Sandeep Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Harkesh Manuja, Advocate for the appellant.
(In RSA-4998-2013)
for respondent No.2 (In RSA-117-2014)

Mr. Baldev Raj Mahajan, Sr. Advocate with
Mr. Padamkant Dwivedi, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

By this judgment, RSA-4998-2013 and RSA-117-2014 shall
stand disposed of. Both the appeals are arising from a common judgment
passed by the learned trial Court as also by the First Appellate Court

while deciding a suit for possession by way of specific performance of the agreement to sell. Defendant No.1 and 2 have filed these two separate appeals against the common judgment passed by the learned trial Court and the First Appellate Court.

In the considered view of this Court, following questions need determination:-

- 1) Whether the plaintiff is proved to be ready and willing to perform his part of the contract?
- 2) Whether defendant No.2 is proved to be a bona fide purchaser for consideration and, therefore, entitled to protection under Section 19 of the Specific Relief Act, 1963?

Plaintiff-respondent No.1-Sandeep Kumar filed a suit for possession by way of specific performance of the agreement to sell dated 14.09.2005, executed by defendant No.1, agreeing to sell land measuring 21 kanals 13 marlas at the rate of ₹3,27,000/- per acre, for a total sale consideration of ₹8,84,943/- after receiving earnest money of ₹2,50,000/-. As per agreement to sell, sale deed was to be executed on 26.05.2006. Agreement to sell is Ex.P1 on the record. Thereafter, defendant No.1 executed a supplementary agreement on receipt of ₹1,50,000/- as additional amount. The aforesaid supplementary agreement is scribed on reverse of the first leaf of the agreement to sell. In this supplementary agreement, defendant No.1 has also acknowledged receipt of ₹2,50,000/-. It is also noted in the aforesaid supplementary agreement that defendant No.1 has further received ₹1,50,000/- and thus, till that day, he has

received ₹4,00,000/-. Plaintiff claims that defendant No.1 has sold the property in favour of defendant No.2 i.e. his own grandson on 17.01.2006 without any consideration in order to defeat the rights of the plaintiff accrued under the agreement to sell. It may be noted here that the suit was filed on 17.02.2006 i.e. much before the target date (26.05.2006) agreed to in the agreement to sell.

Defendant No.1, filed written statement claiming that neither he executed any agreement to sell in favour of the plaintiff nor received the amount of earnest money or additional amount. Defendant No.2 claimed that no suit is maintainable against him. He claimed that he is a bona fide purchaser and is not grandson of defendant No.1.

Learned trial Court as well as First Appellate Court have concurrently recorded a finding that agreement to sell propounded by the plaintiff has been proved on receipt of consideration by defendant No.1.

Learned trial Court granted alternative relief to the plaintiff while recording a finding that defendant No.2 is a bona fide purchaser. The aforesaid finding has been reversed by the learned First Appellate Court. It may be noted here that two first appeals were filed, one by plaintiff and second by defendant No.1.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellant drew attention of the Court to para 22 of the judgment passed by the First Appellate Court wherein it

has been mentioned that plaintiff was not having sufficient amount to make the payment. In the considered view of this Court, this is not the finding of the First Appellate Court. Learned First Appellate Court, while writing judgment, has recorded a finding that the agreement to sell was executed in favour of the plaintiff by defendant No.1 on payment of earnest money and he had also received subsequent payment of ₹1,50,000/-.

Learned counsel for the appellant further submitted that payment of the earnest money of ₹2,50,000/- is not proved as the plaintiff has stated that he paid the amount of ₹2,50,000/- after withdrawing it from a particular bank account which is found to be factually incorrect. On first blush, the argument of learned counsel for the appellant appears to be attractive, however, on close scrutiny, it is found without substance. It may be noted here that defendant No.1, who had agreed to sell, has not appeared in evidence to deny either the execution of the agreement to sell or receipt of ₹2,50,000/- as earnest money and thereafter ₹1,50,000/- towards additional amount. Still further, the plaintiff has specifically stated that he has paid ₹2,50,000/- on 14.09.2005 and thereafter ₹1,50,000/- on 11.11.2005. No doubt, the plaintiff during cross-examination has stated that the amount of ₹2,50,000/- was withdrawn by him from a bank account, however, one line in the cross-examination cannot be read in isolation from the entire statement. If entire statements of the plaintiff as also two marginal witnesses as also the scribe are carefully read, it stands proved that the amount of ₹2,50,000/- was paid

by the plaintiff to defendant No.1 on 14.09.2005 at the time of execution of agreement to sell. The agreement to sell is in writing which is thumb marked by defendant No.1. Further, defendant No.1 has also executed a separate receipt acknowledging receipt of ₹2,50,000/-. Still further, writing dated 11.11.2005 further re-enforces the fact that ₹2,50,000/- had been paid on 14.09.2005. Therefore, it cannot be stated that plaintiff has failed to prove the payment of ₹2,50,000/-.

Learned counsel for the appellant further submitted that the plaintiff has failed to prove his readiness and willingness. He submitted that the plaintiff has not produced on record substantive evidence to prove that the remaining amount of sale consideration was ready and available with him for completing the deal.

This Court has considered the submissions. However, finds no substance.

At this stage, it may be noted that the target date for execution and registration of the sale deed as per agreement to sell (dated 14.09.2005) was 26.05.2006. The plaintiff on coming to know of the registration of the sale deed by defendant No.1 in favour of defendant No.2 filed the suit within one month from the date the sale deed was executed. The plaintiff, in his plaint, has specifically stated that he is ready and willing to perform his part of the contract. On reading of the evidence of the plaintiff, it is apparent that he has also deposed in line with his pleadings. In cross-examination also, the plaintiff has stuck to his stand. In these circumstances, the plaintiff is found to be ready and

willing to perform his part of the contract.

Now another important point needs consideration.

On the one hand, learned counsel for defendant No.2 has pleaded that he is a bona fide purchaser whereas learned Senior counsel appearing on behalf of the plaintiff has disputed the same. In this regard, certain facts are required to be noticed which prove that defendant No.2 is not a bona fide purchaser for valuable consideration. The reasons are as under:-

- i) On careful reading of the sale deed executed by defendant No.1 in favour of defendant No.2 dated 17.01.2006, it is apparent that no sale consideration was paid at the time of execution of the sale deed. It was recorded in the aforesaid sale deed that entire consideration has been received in advance at home. No prior agreement to sell has either been claimed by defendant No.2 nor it has been placed on file. In absence of any prior agreement to sell, chances of payment of entire sale consideration are remote.
- ii) The agreement to sell in favour of the plaintiff is for a total sum of ₹8,84,943/- whereas sale deed Ex.PX in favour of defendant No.2 shows that entire land has been sold for ₹5,41,950/-. Defendant No.2 has failed to prove how and from what source he paid the amount of ₹5,41,950/-. Defendant No.2, in order to prove the availability of the sale consideration, has produced a sale deed executed by him Ex.D7 which is again registered on 17.01.2006. However, on careful reading of the aforesaid sale deed Ex.D7, it is

apparent that in the aforesaid sale deed also, it has been recorded that the entire sale consideration stands paid in advance to defendant No.2.

- iii) Defendant No.2 and plaintiff are residents of the same village. Plaintiff claims that he is known to defendant No.2 and had in fact disclosed the agreement to sell when both were together attending a party. It may be noted here that defendant No.2 has admitted that plaintiff as well as defendant No.2 belong to same community i.e. Rajputs. In such circumstances, the First Appellate Court has correctly held that defendant No.2 cannot claim that he is a bona fide purchaser without notice.
- iv) The agreement to sell dated 14.09.2005, endorsement dated 11.11.2005 in favour of the plaintiff and the sale deed executed by defendant No.1 in favour of defendant No.2 are scribed by one Scribe i.e. Surinder Kumar who has appeared as PW4.
- v) Defendant No.2 has not pleaded that plaintiff and defendant No.1 had colluded. In evidence, defendant No.2 has stated so, however, apart from the bald statement, no evidence has been proved. Still further, no collusion between plaintiff and defendant No.1 is established. Had there been any collusion between plaintiff and defendant No.1, defendant No.1 would not have filed first appeal and second appeal in this Court. Still further, the plaintiff had agreed to purchase the property for a total sum of ₹8,84,943/- i.e., ₹3,33,000/- more than the sale consideration allegedly disclosed in

the sale deed dated 17.01.2006 executed by defendant No.1 in favour of defendant No.2. Still further, the plaintiff as noted above, filed the suit for possession by way of specific performance of agreement to sell on 17.02.2006 i.e. more than three months before the target date fixed in the agreement to sell.

Keeping in view the aforesaid facts which have come on record, this Court does not find any good ground to interfere with the well reasoned judgment passed by the learned First Appellate Court. Accordingly, both the appeals separately filed by defendant Nos.1 and 2 are ordered to be dismissed. However, defendant No.2 is directed to join defendant No.1 in execution and registration of the sale deed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

15.01.2020

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No