

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

RSA No.2139 of 2014(O&M)

Date of decision: 3.3.2020

Kirpal

.....Appellant

VERSUS

Pohap Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rakesh Kumar Sharma, Advocate for the appellant.

Mr. Lokesh Sinhal, Advocate for respondent No.2.

REKHA MITTAL, J.

Kirpal Singh, the unsuccessful plaintiff is in appeal to assail concurrent findings recorded by the Courts whereby suit for possession by way of specific performance of agreement to sell dated 24.01.2005 purported to be executed by Pohap Singh, his brother has been dismissed.

The facts, in brief, are that the appellant/plaintiff set up agreement to sell dated 24.01.2005 in respect of land measuring 7 kanal 4 marlas situated in village Amroo, Tehsil Palwal, agreed to be sold for Rs.3 lakh out of which Rs.2.5 lakh was paid as part payment/earnest money. The balance sale consideration of Rs.50,000/- was agreed to be paid at the time of registration of sale deed on 23.01.2006. Defendant No.1 agreed to redeem simple mortgage by payment of loan of Rs.70,000/- to the bank. It is averred that appellant always remained ready and willing to perform his

part of the agreement. He came to know that defendant No.1 executed sale deed of the suit land in favour of defendant No.2 on 14.10.2005. Hence, the suit.

Defendant No.1 admitted execution of agreement of sale, fixing of 23.01.2006 for registration of sale deed but denied receipt of Rs.2.5 lakhs towards part payment/earnest money. He further pleaded that he disclosed to defendant No.2 about existence of agreement dated 24.01.2005 in favour of the plaintiff but defendant No.2 proclaimed that she herself would settle the matter with the plaintiff about prior agreement to sell.

Defendant No.2 filed the written statement and raised the plea that she is bona fide purchaser for valuable consideration of Rs.4 lakh vide sale deed dated 14.10.2005. The suit land was under mortgage with Faridabad District Primary Cooperative Agriculture and Rural Development Bank Ltd for Rs.70,000/-. The answering defendant paid Rs.1 lakh to defendant No.1 for clearing the loan. Defendant No.1 had not executed any agreement dated 24.01.2005. The agreement was stated to be false, forged and fabricated document procured by defendant No.1 in collusion with the plaintiff after execution and registration of sale deed.

The trial Court framed issues reproduced in para 6 of the judgment of said Court.

The evidence adduced by the parties finds reference in para 7 and 8 of the judgment of trial Court. Having heard counsel for the parties in the light of materials on record, the trial Court held that suit was

collusive between plaintiff and defendant No.1. Defendant No.2 was held to be bona fide purchaser of suit land.

The Court in appeal affirmed findings of the trial Court with regard to the agreement to sell being collusive. By taking into consideration the circumstances noticed in paras 17 to 21 of its judgment, it was held that there is no legal, valid and authentic agreement Ex.P1 in favour of the plaintiff and he had filed the suit in collusion with his brother Pohap Singh just to defeat legitimate right of defendant No.2 over the suit property.

Counsel for the appellant would argue that there is no material on record to substantiate plea of defendant No.2 that agreement dated 24.01.2005 is ante dated or created to defeat right of defendant No.2, admittedly, purchaser of suit land vide sale deed dated 14.10.2005. It is further argued that findings of the Courts upholding plea of defendant No.2 that she is bona fide purchaser for consideration and without notice of agreement are not based upon correct appreciation of materials on record.

Counsel representing respondent No.2, on the contrary, has supported consistent findings recorded by the Courts with the submission that appellant has miserably failed to make out a case that findings suffer from perversity or raise a question of law. It is further argued that it is not open for the Court in second appeal to re-appreciate the entire evidence and intervene in concurrent findings based upon evidence merely because a different view is possible. It is vehemently argued that husband of Smt. Sarla Devi, purchaser under sale deed dated 14.10.2005, is the person at

whose behest the sale of suit land was effected. He was examined in the case but nothing tangible and material has been brought-forth in cross examination to create a slightest doubt qua plea of defendant No.2 that she is bona fide purchaser for consideration without knowledge of agreement propounded by the appellant, thus, entitle to protection under Section 41 of the Transfer of Property Act, 1882.

I have heard counsel for the parties, perused the paper-book and records.

I have examined the factual findings recorded by the Courts, in the light of materials on record. The Courts have examined the case from various different angles in order to arrive at conclusion that the agreement in dispute is the result of collusion between the appellant and defendant No.1, real brothers. The written statement filed by defendant No.1 reveals that he not only admitted execution of agreement of sale but even gone to the extent of saying that he had revealed the factum of existence of agreement to Smt. Sarla Devi before execution of sale deed in her favour. There is nothing on record suggestive of the fact that Sarla Devi was desperate to purchase the suit land and could even incur the risk of involving in litigation, may be, initiated at the behest of appellant on the basis of any such agreement. As per agreement propounded by the appellant, the land was agreed to be sold for Rs.3 lakh but sale deed in favour of Smt. Sarla Devi was executed for Rs.4 lakhs. Defendant No.1 has neither denied execution of sale deed nor contents thereof particularly the sale consideration mentioned therein. Out of Rs.4 lakhs, Rs.3 lakhs

were paid before the Registering Authority, duly recorded in the endorsement made by the said authority. It has also been established on record that on the date of sale deed i.e. 14.10.2005, defendant No.1 discharged his liability qua outstanding loan obtained by mortgage (simple) of the land in question. Taking into consideration the aforesaid, it becomes crystal clear that plea raised by defendant No.1 that either there was an agreement of sale in existence on 14.10.2005 or he had disclosed the said fact to Smt. Sarla Devi becomes patently false. This fact alone goes a long way to establish that the agreement in question was created in active connivance of appellant and defendant No.1 in order to cause wrongful loss to Smt. Sarla Devi, purchaser of the suit land.

As has been noticed hereinbefore but for the sake of repetition, the Courts have adverted in detail to various aspects of the matter for holding that agreement is the result of collusion. Kirpal – appellant appeared in the witness box and tendered into evidence his affidavit Ex.PW5/1 by way of examination in chief. In cross examination, he had stated that there are differences (man mutav) between both the brothers for the past about 20 years. It is difficult to accept to reason that if there are differences between the brothers for the past about 2 decades, defendant No.1 would have agreed to sell his land to the appellant more particularly in the circumstances that appellant has raised the plea of using a part of suit land for the purpose of passing his tractor to approach his land and even set up a plea of easement of necessity etc. In view of the facts and circumstances noticed by the Courts coupled with the discussion made hereinbefore, I do not find any reason to intervene.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed with costs.

MARCH 3, 2020 'D. Gulati'	(REKHA MITTAL) JUDGE
Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No