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

**RSA-4294-2019 (O&M)
Date of Decision:19.09.2022**

Bharpur Kaur @ Bhuro

.. Appellant

Vs.

Malook Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Raman Mohinder, Advocate for the appellant.

...

Manoj Bajaj, J. (Oral)

CM-12034-C-2019

This application has been filed under Section 151 CPC for condonation of delay of 135 days in re-filing the appeal.

Heard.

For the reasons mentioned in the application, the same is allowed and delay of 135 days in re-filing the appeal is condoned.

RSA-4294-2019 (O&M)

Appellant-Vendor (defendant No.3) has preferred this regular second appeal to challenge the judgment and decree dated 28.08.2018 passed in Civil Appeal No.40 dated 17.01.2017 by the first appellate Court, whereby the judgment and decree dated 21.12.2016 passed in Civil Suit No.42 dated 28.02.2012 by Addl. Civil Judge (Sr. Divn.), Sunam, dismissing the suit of plaintiffs (vendees) seeking declaration, permanent injunction and alternatively claiming recovery of sale consideration, was reversed, and their suit was decreed only to the extent of recovery of Rs.7

lac along with interest @ 6% p.a. against the appellant-Bharpur Kaur @

Bhuro.

Briefly, the facts leading to the appeal are that the plaintiffs filed suit for declaration and permanent injunction claiming themselves to be co-owners along with performa defendant No.6 in possession over land measuring 8 kanals (160/1000 shares) of total land measuring 50 kanals comprised in killa Nos.176//1/8-0, 9/8-0, 10/8-0, 11/8-0, 12/8-0, 177//4/2/2-0, 5/8-0 situated at village Daska. As per pleadings, the suit property was initially owned by Gurjant Singh (defendant No.2), who sold it to Bharpur Kaur @ Bhuro-defendant No.3 (appellant) through sale deed dated 23.01.2008 and subsequently, the suit property was purchased by Mohinder Kaur (predecessor-in-interest of plaintiffs), by way of sale deed No.1698 dated 22.10.2008 (Ex. P-1). The owner Gurjant Singh (defendant No.2) in connivance with Darbara Singh (defendant No.1) got prepared forged agreement to sell dated 08.08.2003, whereupon a Civil Suit bearing No.162/2005 for specific performance of the agreement to sell filed by Darbara Singh was decreed by Civil Judge (Jr. Divn.), Sunam on 17.12.2010 (Exs. P-2 and P-3). The plaintiffs and performa respondent No.6 being legal representatives of Mohinder Kaur prayed for a decree of declaration to challenge the decree dated 17.12.2010 as illegal, null, void and not binding upon their rights, who had acquired title from vendor Bharpur Kaur @ Bhuro. As a consequential relief, a decree for permanent injunction restraining the defendants from interfering in their possession was prayed. Alternatively, plaintiffs claimed refund of sale consideration amounting to Rs.7 lac along with interest @ 1.5 % p.m. against vendor-Bharpur Kaur @ Bhuro.

The claim of the plaintiffs was contested by defendants by

filing separate written statements. Defendant No.1-Darbara Singh in his written statement raised preliminary objections regarding maintainability of suit, locus standi, cause of action and concealment of material facts, and while denying the claim on merits, pleaded that the sale deed executed by Gurjant Singh (defendant No.2) in favour of Bharpur Kaur @ Bhuro (defendant No.3) is illegal, null and void, because it was executed during the pendency of his suit against Gurjant Singh (defendant No.2) seeking specific performance of agreement to sell. According to him, the subsequent sale deed executed by defendant No.3 in favour of Mohinder Kaur is also illegal and void. Darbara Singh defended the judgment and decree dated 17.12.2010 in his favour as legal and valid. He prayed that the suit be dismissed.

Similarly, Gurjant Singh-defendant No.2 in his written statement raised various preliminary objections and refuted the averments contained in the plaint. On merits, he pleaded that the plaintiffs never remained in possession of the suit property and prayed for dismissal of the suit.

Bharpur Kaur @ Bhuro (defendant No.3) in her written statement pleaded that she acquired title of the suit property against payment of sale consideration to Gurjant Singh, who executed sale deed in her favour, and while contesting the suit by Darbara Singh, she had also pleaded further transfer of suit property in favour of Mohinder Kaur. According to her, this suit by legal representatives of Mohinder Kaur has been filed to harass the defendants, and she prayed for dismissal of the suit.

Upon considering the pleadings of the parties, the trial Court in all, framed four issues and thereafter, the parties adduced their respective

evidence. The trial Court after considering the pleadings and evidence, dismissed the suit vide judgment and decree dated 21.12.2016.

Dis-satisfied with the said judgment and decree dated 21.12.2016, the plaintiffs preferred an appeal before the first appellate Court and the same was allowed vide judgement and decree dated 28.08.2018 passed by District Judge, Sangrur. Hence this second appeal.

Learned counsel for the appellant has argued that when the appellant Bharpur Kaur @ Bhuro purchased the suit property from vendor Gurjant Singh (defendant No.2), she was not aware that an agreement to sell dated 08.08.2003 had already been executed by him in favour of Darbara Singh, whereupon the litigation by way of Civil Suit No.162/2005 between them is pending. He further submits that the appellant being *bona fide* purchaser cannot be made to suffer, therefore, the impugned decree passed by the first appellate court directing the appellant to refund the sale consideration of Rs.7 lac with interest to the plaintiffs is not sustainable. He has argued that the suit was dismissed by the trial Court vide judgment and decree dated 21.12.2016, but the Appellate Court erroneously proceeded to set aside it through the impugned judgment and decree dated 28.08.2018, therefore, the interference is called for by this Court.

During the course of hearing, it is not disputed by learned counsel that the suit property, which was initially owned by Gurjant Singh (defendant No.2) was sold to appellant Bharpur Kaur @ Bhuro vide sale deed dated 23.01.2008, i.e.during the pendency of suit bearing No.162/2005 filed by Darbara Singh against Gurjant Singh, and the appellant was impleaded as defendant in the said suit in January, 2009. He fairly states that the said judgment and decree was never challenged by appellant and the

same has attained finality.

After hearing the learned counsel and considering the above background, this Court finds that the ground raised by the appellant, being a *bona fide* purchaser without knowledge of the agreement to sell dated 08.08.2003 between Gurjant Singh and Darbara Singh, already stands examined by the Court of competent jurisdiction in the earlier suit bearing No.162/2005, wherein the findings were returned against the appellant-Bharpur Kaur @ Bhuro by rejecting her stand of bona fide purchaser against valuable consideration. Since, the said findings have attained finality, therefore, the same would operate as *res judicata* against her. Thus the plaintiffs, who are legal representatives of Mohinder Kaur, are claiming refund of sale consideration from the appellant as the sale deed in favour of Bharpur Kaur @ Bhuro was held to be invalid being hit by doctrine of *lis pendens*. Further, a perusal of the impugned judgment and decree passed by the first appellate court shows that it has carefully examined the pleadings and evidence of the parties, while returning findings on material issues in favour of plaintiffs, which are based upon proper appreciation of the material on record.

Resultantly, finding no merit in this appeal, muchless involvement of any question of law, the same is dismissed.

19.09.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No