

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

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**CM-16343-C-2019 and
CM-16344-C-2019 in/and
RSA-5718-2019 (O&M)
Date of decision: 14.11.2022**

Neeraj

.....Appellant

Versus

Brij Pal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Abhinav Oberoi, Advocate for the appellant.

MANJARI NEHRU KAUL, J. (ORAL)

CM-16343-C-2019

Allowed as prayed for as deficiency in Court fee has already been made good.

CM-16344-C-2019

For the reasons mentioned in the application, the same is allowed and delay of 13 days in re-filing the appeal is condoned.

RSA-5718-2019 (O&M)

Suit for possession by way of specific performance and declaration seeking to set aside the sale deed bearing No.3485 dated 12.01.2011 with consequential relief of permanent injunction filed by the respondent No.1/plaintiff was decreed by the Trial Court vide judgment and decree dated 12.08.2015. The appeal preferred by the appellant/defendant No.2 against the judgment and decree of the Trial Court was dismissed by the Lower Appellate Court vide order dated 30.05.2019. The appellant/defendant No.2 is now before this Court in Regular Second Appeal.

The parties to the *lis* hereinafter shall be referred to by their original positions in the suit.

The pleaded case of the plaintiff may be noticed as thus. Defendant No.1-Premo executed an unregistered sale deed dated 19.04.2010 to sell her 4 kanal 13 marla land as detailed in the suit, situated at Village Kheri Gujjar, Tehsil Ganaur, District Sonapat (hereinafter referred to as 'the suit property') to the plaintiff for a consideration of Rs.4,36,000/-. The plaintiff paid the entire sale consideration amount and purchased stamp papers worth Rs.21,800/- for registration of the sale deed. Defendant No.1 put her thumb impressions on the deed which was duly attested by the witnesses namely Mahender Singh, Azad and Surender. However, sale deed dated 19.04.2010 (Ex.P3) could not be registered for want of No Objection Certificate (NOC) from the District Town Planner. Defendant No.1 assured the plaintiff that she would get the NOC and thereafter the sale deed would be registered. Further, a supplementary agreement dated 06.05.2010 (Ex.P4) was executed by defendant No.1 in favour of the plaintiff acknowledging payment of consideration amount and for extension of time for execution/registration of sale deed. Possession of suit property was delivered to the plaintiff and plaintiff started cultivating the land. However, defendant No.1 in collusion with defendant No.2-Neeraj executed sale deed dated 12.01.2011 (Ex.P2) in order to defraud the plaintiff, and on 26.01.2011 defendant No.2 forcibly dispossessed the plaintiff out of the suit property claiming ownership on the basis of sale deed dated 12.01.2011 (Ex.P2).

In her written statement, defendant No.1 admitted to affixing her thumb impression on the sale deed dated 19.04.2010 (Ex.P3) in the presence of witnesses, however, she denied the receipt of the sale consideration. It was averred by her that since the entire sale consideration amount had not been paid to her by the plaintiff, she had refused to appear before the Sub Registrar. It was denied by defendant No.1 that she had ever put the plaintiff in possession of the suit property. The execution of the supplementary agreement dated 06.05.2010 (Ex.P4) was also denied and it was on the contrary alleged that the said supplementary agreement as well as the receipt and other documents were forged. Defendant No.1, however, at the same time admitted the execution of sale deed dated 12.01.2011 (Ex.P2) in favour of defendant No.2 through her GPA holder Jaipal.

Defendant No.2 controverted the pleaded case of the plaintiff by claiming herself to be the bonafide purchaser of the suit property. It was further averred that she had purchased the suit property after due verification of ownership of her vender by inspecting the relevant title documents as well as making enquiries in the village. Defendant No.2 denied having any knowledge of the unregistered sale deed dated 19.04.2010 (Ex.P3) and agreement dated 06.05.2010 (Ex.P4). It was averred by her that since she was a bonafide purchaser of the suit property, sale deed dated 12.01.2011 (Ex.P2) could not be annulled.

Both the Courts decreed the suit of the plaintiff by recording concurrent findings that the sale deed (Ex.P3), agreement

(Ex.P4) and payment of sale consideration by the plaintiff to defendant No.1 stood proved. It was observed by the Courts that defendant No.1 had failed to lead any evidence to prove the allegations of forgery qua Ex.P4. It was also held that though defendant No.2 averred that she had purchased the property from GPA holder Jaipal after verifying his title, however, had it been the case she would have easily known that Jaipal was not the owner of the suit property instead it was defendant No.1 who was the owner. Hence, it was evidently a case of collusion between the defendants.

Learned counsel appearing for defendant No.2 vehemently argued that the Courts below failed to appreciate that defendant No.1-Premo had categorically averred in her written statement that Ex.P4 was a forged and fabricated document and even the plaintiff had only placed a copy and not the original agreement on record. He further argued that as the value of one property was more than Rs.100/- in the absence of registration of sale deed (Ex.P3) as per law, it could not have been led into evidence and the title could not have been taken to have been conveyed in favour of the plaintiff. Learned counsel, therefore, argued that both the Courts below had fallen into error by placing reliance upon Ex.P3 and Ex.P4 and decreeing the suit of the plaintiff. He further vehemently argued that even otherwise defendant No.2 was a bonafide purchaser of the suit property for sale consideration and was not even aware about the alleged transactions between the plaintiff and defendant No.1. Hence, in the absence of registration of sale deed in favour of the plaintiff, the right of defendant No.2 over the suit property

was protected being a bonafide purchaser by virtue of sale deed dated 12.01.2011. He also argued that defendant No.2 had checked the revenue records before purchasing the suit property and at the relevant time only defendant No.1-Premo was shown to be owner in possession of the same.

I have heard learned counsel and perused the relevant material on record.

Before proceeding further, it would be relevant to notice here that defendant No.1-Premo has not impugned the concurrent findings recorded by the Courts below.

This Court does not find any merit in the submissions made by learned counsel for defendant No.2 that the Courts below had erroneously relied upon Ex.P3 and Ex.P4 while decreeing the suit of the plaintiff. Though Ex.P3 is unregistered document, however, defendant No.1 has not denied, rather admitted to its execution. Therefore, recitals made in Ex.P3 have to be appreciated and considered in the face of this admission by defendant No.1. As far as proof of receipt of sale consideration is concerned, no explanation was offered by defendant No.1 as to why, being a prudent person, she had affixed her thumb impression on the sale deed (Ex.P3) if the sale consideration, as alleged by her had not been paid by the plaintiff. Still further, it was alleged by defendant No.1 that Ex.P4 was a forged and fabricated document, however, admittedly no evidence in support thereof was led by her so much so she did not even muster the courage to compare her the admitted thumb impression on Ex.P3 with the disputed one on Ex.P4.

Further, this Court does not concur with the submissions of the learned counsel for defendant No.2 that she is a bonafide purchaser of the suit property. Though one of the grounds taken by defendant No.2 is that she had checked the revenue records where defendant No.1 was shown to be the owner at the relevant time, however, this stand of hers is at complete variance with her written statement and her testimony recorded as DW-2 wherein she deposed that she had purchased the suit property from Jaipal after verifying his title and still further she deposed that she did not even know defendant No.1-Premo. Therefore, it is discernible that there was indeed a collusion between all the defendants. In the light of these circumstances, defendant No.2 cannot be held to be a bonafide purchaser of the suit property.

On being pointedly asked, learned counsel for defendant No.2 failed to bring to the notice of this Court anything on record to show that the conclusions arrived at by both the Courts below were either contrary to record or suffered from any material illegality.

As a sequel to the above, this Court thus does not find any error in the concurrent findings recorded by the Courts below. Accordingly, the instant appeal being devoid of any merit is dismissed.

14.11.2022

Vinay

**(MANJARI NEHRU KAUL)
JUDGE**

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