

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

105

**RSA-184-2013(O&M)
Date of decision: 03.08.2022**

HAKAM SINGH

..Petitioner

Versus

PARAMJIT KAUR & ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aman Priye Jain, Advocate
for the petitioner.

Mr. Rakesh Gupta, Advocate
for respondents No.3 to 6.

ANIL KSHETARPAL, J(Oral)

1. While assailing the concurrent findings of fact arrived at by the Courts below, the plaintiff has filed the present appeal.

2. Some facts are required to be noticed.

3. The plaintiff filed a suit for grant of decree of specific performance of the agreement to sell or in the alternative, for grant of decree of refund of the earnest money. He claims that the defendant No.1 and 2 executed an agreement to sell on 02.06.2000, with respect to the land measuring 90 kanals and 4 marlas on receipt of earnest money of Rs.5,00,000/- while delivering the possession of the land. As per the agreement to sell, the sale deed was to be executed and registered on 30.05.2001. In the plaint, the plaintiff claims that defendant No.1 and 2 have executed various sale deeds in favour of the remaining defendants. The defendant No.1 and 2 did not contest the suit, whereas, defendant No.3 to 6 claim that the suit has been filed by the plaintiff in collusion with defendant No.1 and 2. The defendants also claim to be bonafide purchasers. The trial

Court, on appreciation of evidence, found that the plaintiff failed to prove

either the agreement to sell or delivery of possession. The Court observed that the plaintiff's own evidence shattered his case.

4. The First Appellate Court, after reappreciating the evidence, held that the agreement to sell appears to be a suspicious document as the name of the scribe of the agreement to sell has not been disclosed. The Court further held that the plaintiff is a property dealer and delivery of possession as claimed in the plaint has not been proved.

5. This Court has gone through the judgments passed by both the Courts below as well as the grounds of appeal. The learned counsel has proposed the following questions of law:-

“i. WHETHER in the absence of any rebuttal from the execution of Agreement to Sell, the execution of the Agreement would be deemed to have been proved on the record?

ii. WHETHER subsequent purchasers can challenge the execution of the Agreement to Sell or not?

iii. WHETHER the Court is under obligation to grant a Decree for the recovery of the money, if the executants did not contest the suit at all?

iv. WHETHER the defendants are deemed to be bonafide purchasers in the facts and circumstances of the present case?

v. WHETHER the impugned Judgments and Decrees are vitiated on account of non-consideration of oral and documentary evidence on the record?”

6. As regards question No.1, the onus lies on the plaintiff to prove that the agreement to sell was intended to be acted upon particularly when the defendant No.1 and 2 have not chosen to contest the suit.

7. As regards question No.2, it may be noted that a subsequent purchaser for consideration, before filing of the suit, steps into the shoes of the vendor and therefore, he is entitled to defend the suit.

8. The next question is with regard to the obligations of the Court

to grant the decree of recovery of money. It may be noted that such a decree can be granted only if the Court records a finding that there was any payment of the consideration amount in the agreement to sell. In the present case, both the Courts have found that the agreement to sell put forth by the plaintiff is not a genuine document.

9. The next question of law does not survive because the plaintiff has failed to prove the agreement to sell itself.

10. The last question of law also does not arise because the attention of the Court has not been drawn to any substantive error in consideration of oral and documentary evidence on record or any non-appreciation thereof.

11. Hence, no ground to interfere is made out.

12. Dismissed.

13. All the pending miscellaneous applications, if any, are also disposed of.

August 03rd, 2022

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(ANIL KSHETARPAL)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>