

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

Sr. No.114

**RSA No.2566 of 2022 (O&M)
Date of Decision: 01.12.2022**

Shri Ankur Gupta

.... Appellant

Versus

Smt. Kavita Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Mukesh Rao, Advocate for the appellant.

TRIBHUVAN DAHIYA, J. (ORAL)

This is defendant's second appeal against the concurrent findings recorded by both the Courts below.

2. The facts of the case in brief are, respondent No.1/plaintiff (hereinafter referred to as the 'plaintiff') filed a suit for recovery of Rs.56,17,000/- against three defendants, one of whom, i.e., defendant No.1 has filed instant regular second appeal. It was pleaded that plaintiff was owner in possession of the suit land to the extent of 57/826 share, i.e., 2 *kanal* 17 *marla* situated within the revenue estate of Village Bhondsi, Tehsil Sohna, District Gurgaon, which was purchased from defendant No.1 vide registered sale deed dated 03.06.2011. Defendant No.1 had purchased the aforesaid land from defendant No.2 vide registered sale deed dated 25.11.2010; whereas, the latter had already sold the same land to defendant No.3 vide sale deed dated 17.09.2008. Therefore, defendant No.1 played a fraud upon the plaintiff by colluding with defendant No.2 and 3 to grab money and to defeat her valuable rights. They executed a forged sale deed

dated 03.06.2011 in her favour with *mala fide* intention, since defendant No.1 was not owner in possession of the suit land and had no right to sell the same to the plaintiff. The plaintiff incurred huge expenditure to the tune of Rs.40 Lakh as sale consideration, Rs.1,20,000/- as stamp duty, stamp charges to the tune of Rs.15,000/- and other expenses to the tune of Rs.5,000/-.

3. The suit was contested by the defendants. It has been admitted that defendant No.1 purchased the suit property from defendant No.2, but he had no knowledge of the sale of the suit property by defendant No.2 to defendant No.3 prior thereof. The allegations of fraud and collusion or *mala fide* intention were denied.

4. The following issues were settled between the parties on the basis of pleadings:

1. Whether the plaintiff is entitled to a decree for recovery of Rs.56,17,000/- along with interest @ 24% per annum from the date of the filing of the suit till its realization as prayed for on the grounds mentioned in the plaint?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD
3. Whether the plaintiff has no cause of action and locus-standi to file the present suit?OPD
4. Whether the suit of the plaintiff has not been properly valued for the purposes of court fees and jurisdiction?OPD
5. Whether the suit of the plaintiff is liable to be dismissed under Order VII Rule 11 read with section 151 CPC as the same is barred by limitation?OPD
6. Relief.

5. The suit was decreed on the basis of findings recorded on Issue No.1. Issues No.3, 4 and 5 were not pressed. Issue No.2 was decided against the defendants on the basis of findings recorded on Issue No.1 only. It has been held on Issue No.1 that defendant No.1 was not a *bona fide* purchaser of the suit land from defendant No.2. Had he been vigilant and made proper inquiries, he would have come to know regarding the registered sale deed 17.09.2008 earlier executed by defendant no.2 in favour of defendant No.3 with respect to the suit land. Since the sale deed in favour of defendant No.1 was void, he was duty bound to repay the amount so received by him from the plaintiff.

6. Learned counsel for the appellant/defendant No.1 has made a reference to an FIR No.1 dated 05.01.2013, which was registered at the instance of the plaintiff, and also a trilateral agreement (Ex.D1) said to have been executed with the plaintiff's husband, who statedly compromised the matter on behalf of the plaintiff and received an amount of Rs.10 Lakh. Based on the said agreement it has been claimed that liability of defendant No.1 shifted to defendant No.2 and her husband. Therefore, defendant No.1 was not to be blamed nor could the amount be ordered to be recovered from him. Learned counsel, by referring to an agreement, Ex.DX (Annexure A-8), has vehemently argued that the said agreement entered into between the plaintiff, one Sunil and defendant no.2, has not been considered by the Courts below, therefore, their findings become unsustainable. By this agreement the parties thereto agreed that the land was wrongly sold to the plaintiff; further, by way of a panchayat it was settled that the land would be taken back by the third party/defendant no.2 and Rs.1.15 crore would be returned to the first party/plaintiff, and Rs.10 lakh were actually returned in

terms thereof on 23.03.2012. An agreement to sell was also executed by the third party/defendant no.2 with Rajesh Singh/plaintiff's husband to sell a residential house.

7. The arguments advanced by the learned counsel have no merit. These aforesaid agreements have been duly considered by the Courts below, as apparent from the discussion in paragraph nos.21 and 22 of the lower appellate Court judgment, which read as under:

21. A careful perusal of the agreement Ex.DA indicates that said agreement Ex.DA is not the concluded compromise. The said agreement was not signed by Sunil or Ankur Gupta. As such, same cannot be implemented. So far, question of seeking specific performance of agreement Ex.DA is concerned, the same was executed between defendant no.2, her husband and that between Rajesh husband of Kavita. Same was never executed between plaintiff and defendant no.2. Moreover, the said agreement was for repayment of Rs.1,50,00,000/- out of which only sum of Rs.10 lacs passed from defendant no.2 to husband of Kavita whereas, the sale consideration passed through sale deed bearing vasika no. 1156 dated 3.6.2011 is only Rs.40 lacs. The said discussion also answers the contentions raised by Id. counsel for the appellant to the effect that the plaintiff is getting unjust enrichment from the

money obtained from defendant no.2 which she has kept with herself and is further demanding refund of sale consideration from defendant no.1.

The question would have been different had she been claiming sum of Rs.1,50,00,000/- from defendant no.1 pursuant to execution of agreement Ex.DA which is not so in present case. Moreover, defendant no.2 is not coming forward to contest the case or to honour the commitment. Thus, aforesaid contentions raised by Id, counsel for appellant are turned down.

22. In the backdrop of afore-said discussion, it will be worthwhile to hold here that the only remedy available with the plaintiff is to seek recovery of sale consideration and other ancillary expenses from defendant no.1. There was privity of contract between plaintiff and defendant no.1 and not between plaintiff and defendant no.2. In case title of the defendant no.1 found to be defective, the plaintiff has every right to recover the sale consideration from him. The recital contained in sale deed bearing vasika no. 1156 dated 3.6.2011 further substantiate this fact wherein the defendant no.1 undertook to compensate plaintiff in case any defect in title or property is subsequently discovered.

8. The aforesaid discussion shows, the arguments based on the trilateral agreements to shift the liability on the second defendant have been rightly rejected. No evidence has been brought on record that the settlement agreements were concluded contracts honoured by the parties concerned. In the absence whereof, the same have no value and cannot be relied upon. Besides, it is established on record that the sale deed in question was executed by the first defendant and consideration accepted, though he was not owner of the property in question. The same property stood already sold by the second defendant to the third defendant. The collusion to cheat and defraud the plaintiff is, therefore, apparent, and no exception can be taken to the decree passed in her favour ordering recovery of the amount spent and expenses borne. In case there is any inter-se dispute between the defendants on shifting of liability, that cannot be a basis to non-suit the plaintiff, nor can the findings of the Courts below be disturbed on that account. The same do not suffer from any error of law.

9. Therefore, the well reasoned judgments of the Courts below do not call for an interference by this Court. No substantial question of law arises for consideration.

10. Appeal stands dismissed.

11. Pending miscellaneous application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

01.12.2022
Maninder

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