

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

RSA-3083-2023 (O&M)

Date of decision: 08.11.2023

Ant Ram

....Appellant

Versus

Ash Mohammad and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ram Bilas Gupta, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal the correctness of the judgment and decree passed by the First Appellate Court has been assailed by the plaintiff. The trial court dismissed the plaintiff's suit in entirety, whereas the First Appellate Court has partly decreed the suit.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. Ash Mohammad, owner of the suit property entered into an agreement to sell with Satpal (defendant no.2) on 23rd January, 2003. As per the agreement to sell, the sale deed was to be executed on receipt of the sale consideration. Satpal filed a suit for possession by way of specific performance of the agreement to sell on 22nd March, 2005. During the pendency of the suit and in

violation of the injunction order, the plaintiff purchased land measuring 19 kanals and 16 marlas. The suit filed by Satpal was decreed on 24th May, 2011. The plaintiff filed the present suit on 23rd December, 2015 claiming decree for permanent injunction and declaration that he is owner in possession of the suit land and the judgment and decree passed on 24th May, 2011 is not binding on his rights. The trial court found that the appellant purchased the property during the pendency of the previous suit and therefore, it is governed by Section 52 of the Transfer of Property Act, 1882, however, the First Appellate Court held that the plaintiff is entitled to the declaration with respect to the remaining part of the property, over and above 9 kanals and 18 marlas, which was decreed on 24th May, 2011.

3. Heard the learned counsel representing the appellant at length and with his able assistance perused the paper book. He contends that the suit filed by Satpal was in collusion with Ash Mohammed. He submits that Satpal did not file any proceedings for punishing Ash Mohammad for committing contempt. He further submits that the appellant was not made party to the previous suit and though substantial payment has been made under the agreement to sell, however, possession was not delivered. He further submits that the sale in favour of the plaintiff has never been challenged.

4. This Court has considered the submissions made by the learned counsel representing the appellant. It may be noted here

that the appellant has not led any evidence to prove that Satpal in collusion with Ash Mohammad obtained judgment and decree. It is evident that the suit for possession by way of specific performance was filed on 23rd March, 2005 and it was decreed after a period of more than six years. Ash Mohammad contested the suit tooth and nail. Both the courts, on appreciation of evidence, have found that the previous suit was not result of any collusion. Learned counsel representing the appellant wants that this Court should draw an inference of collusion as on 27 July, 2006 injunction order was passed on the basis of a joint statement suffered by the learned counsel representing the parties. In the considered view of the Court such statement is not sufficient to prove collusion. A suit for possession by way of the agreement to sell was filed on 22nd March, 2005. Satpal filed an application for grant of temporary injunction. During the pendency Ash Mohammad undertook not to alienate the property. This cannot be the sole basis to assume that there was collusion between Ash Mohammad and Satpal.

5. The next argument of the learned counsel representing the appellant has no substance as the sale deed in favour of the appellant was executed during the pendency of the suit. His sale is governed by the rule of lis pendens as is enshrined in Section 52 of the Transfer of Property Act, 1882. Hence, the appellant was not required to be impleaded as a party in the previous suit.

6. The next argument of the learned counsel representing the appellant also has no substance as there was an agreement to sell between Ash Mohammad and Satpal on 23rd January, 2003. As per the agreement to sell, Rs.4,50,000/- was paid as an earnest money out of the total sale consideration of Rs.5,13,000/-. It is not necessary that once a substantial amount has been paid, the possession must be delivered to the agreement holder. It depends upon the terms and conditions of the agreement to sell.

7. The last argument of the learned counsel is to the effect that the sale deed dated 29th October, 2007 in favour of the appellant has not been challenged. At the cost of repetition, the sale deed in favour of the appellant is governed by rule of lis pendens. Hence, it is not required to be challenged. Satpal is not the executant of the sale deed

8. Keeping in view the aforesaid facts, no ground to interfere is made out.

9. Hence, dismissed.

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

08.11.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE