

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

RSA-333-1991 (O&M)

Date of decision: 18.01.2023

Sukhdev Singh and another

...Appellants

Versus

Santokh Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: None.

H.S. MADAAN, J. (Oral)

Notice have been issued to both the parties but nobody has turned up, therefore, I proceed to decide the instant appeal after going through the record.

Briefly stated facts of the case are that plaintiff Santokh Singh had brought a suit against defendants Jarnail Singh, Sukhdev Singh and Natha Singh seeking possession by specific performance of agreement dated 28.03.1980 executed by defendant No.1 Jarnail Singh in favour of plaintiff regarding 10K-8M of land situated at Village Mamman, Tehsil Batala, contending that the consideration amount was agreed to be Rs.30,000/- and the plaintiff had paid a sum of Rs.10,000/- to defendant No.1 as earnest money. The final date for execution of sale deed was agreed to be 09.12.1980. A mortgage amount of Rs.6000/- was agreed to be adjusted whereas remaining

amount was to be paid towards consideration amount. According to the plaintiff, defendant No.1 with a *mala fide* intention had sold the suit land to defendants No.2 and 3 on or before 10.07.1980 much before the date fixed with plaintiff for execution of sale deed. Defendants No.2 and 3 were fully aware of the agreement to sell entered into between the plaintiff and defendant No.1 but even then they got the sale deed regarding the land in question executed from defendant No.1 in their favour. However, that sale deed was void, illegal and ineffective qua rights of the plaintiff in the suit land.

According to the plaintiff, he has been ready and willing to perform his part of the contract throughout but defendant No.1 had backed out of the same, as such, he had filed the suit in question.

2. Notice of the suit was given to the defendants. Only defendants No.2 and 3 appeared and offered a contest, whereas defendant No.1 did not appear despite service and was proceeded against ex parte. In the written statement filed by defendants No.2 & 3, they denied that defendant No.1 had entered into any agreement to sell dated 28.03.1980 with the plaintiff, rather, they claimed that such agreement is result of fraud and collusion of plaintiff with defendant No.1. Such answering defendants submitted that they are bona fide purchasers for consideration without notice, as such, are protected under law. Refuting the remaining assertions, such defendants prayed for dismissal of the suit.

3. The plaintiff filed replication, controverting the allegations

in the written statement whereas reiterating the averments in the plaint.

4. From the pleadings of the parties, following issues were framed:-

1. *Whether the defendant No.1 has executed an agreement dated 28.03.1980 in favour of the plaintiff? OPP*
2. *Whether plaintiff was ready and willing to perform his part of contract? OPP*
3. *Whether defendant nos.2 and 3 are bonafide purchasers without notice with consideration? OPD*
4. *Whether the plaintiff is entitled to the specific performance? OPP*
5. *Relief.*

5. Parties were afforded adequate opportunities to lead evidence in support of their respective claims.

After hearing arguments, the trial Court of Addl. Senior Sub Judge, Batala, decided issues No.1 and 2 in favour of the plaintiff and against defendant No.1; issue No.3 was decided in favour of the defendants No.2 and 3 and against the plaintiff; issue No.4 was decided in favour of the plaintiff and against defendant No.1. Resultantly, vide judgment and decree dated 17.11.1988, an ex parte decree for recovery of Rs.20,000/- was passed in favour of plaintiff and against defendant No.1 with costs, whereas, suit against defendants No.2 & 3 was dismissed.

6. Feeling aggrieved by the judgment and decree passed by the trial Court, the plaintiff had preferred an appeal before District Judge, Gurdaspur, which was assigned to Addl. District Judge,

Gurdaspur, who vide judgment dated 14.11.1990 accepted the appeal and set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff for specific performance of agreement dated 28.03.1980 with costs throughout. It was directed that the plaintiff shall deposit balance sale consideration in the executing Court within two months from today, then the conveyance deed would be executed by defendant No.1 in favour of the plaintiff in accordance with terms of the agreement Ex.P1 and defendants No.2 and 3 would join in making the conveyance deed so as to vest the title in favour of the plaintiff.

7. Now it was turn of defendants No.2 and 3 to feel aggrieved and they had approached this Court by way of filing the present Regular Second Appeal, notice of which was issued to the respondents, who had put in appearance through counsel. However, none of the parties is present today either in person or through counsel.

8. After going through the record, I find that the judgment passed by the trial Court was not proper and appropriate and the trial Court had not properly considered the facts and circumstances of the case and analyzed the evidence properly either intentionally or inadvertently. It had decided issue No.1 in favour of plaintiff holding that defendant No.1 had executed an agreement dated 28.03.1980 in favour of the plaintiff; similarly issue No.2 was also decided in favour of the plaintiff holding that the plaintiff was ready and willing to perform his part of the contract but then coming to issues No.3 and 4,

the trial Court deviated from the right track and wrongly held defendants No.2 and 3 to be *bona fide* purchasers for consideration without notice, when position as borne out from the record was otherwise and defendants No.2 and 3 could not be held to be entitled to protection under law in terms of Section 41 of the Transfer of Property Act. Relief of specific performance of agreement was wrongly denied to the plaintiff by the trial Court, however, learned Addl. District Judge, Gurdaspur rightly set right that wrong and modified the judgment passed by the trial Court finding the plaintiff entitled to specific performance of agreement to sell.

The judgment passed by the Addl. District Judge, Gurdaspur is quite detailed, well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. No illegality or infirmity therein is found to be there. The said judgment is therefore upheld. No substantial question of law arises in this appeal. The appeal is found to be without merit and is dismissed accordingly.

18.01.2023

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No