

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

RSA-3840-2018 (O&M)
Reserved on: 15.11.2023
Date of decision: 30.11.2023

SURESH KUMARI

..Appellant

Versus

RAMNIWAS AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Dalip Kumar Tuteja, Advocate
for the appellant.

ANIL KSHETARPAL, J.

CM-9805 & 9804-C-2018

1. For the reasons stated in the applications for condonation of delay which are supported by an affidavit, the applications are allowed.
2. The delay of 29 days and 110 days in filing and refiling the appeal, respectively, is condoned.
3. CMs stand disposed of.

Main case

4. In this regular second appeal, defendant No.2 assails the correctness of the concurrent findings of fact arrived at by the Courts below while decreeing the suit for grant of decree of declaration and for possession by way of specific performance of the agreement to sell. Originally, Sh. Balbir son of Sh. Jai Lal (defendant No.1) was allotted the land measuring 4 kanal and 1 marla by the State Government. Before the sale deed could be executed, defendant No.1 entered into an agreement to sell with the plaintiff on 12.12.1997, on receipt of Rs30,000/- as earnest money out of total sale

consideration of Rs.65,000/-. It was agreed that defendant No.1 would sell the suit property to the plaintiff by executing a proper sale deed within a period of two months after getting the mutation of the suit land in his favour.

5. The defendant No.1 denied the execution of the agreement to sell as well as the receipt of earnest money. Defendant No.2 claims that she is the bonafide purchaser of a valuable consideration. On appreciation of evidence, both the Courts have found that the execution of the agreement to sell is proved and the plaintiff is ready and willing to perform his part of the contract. It was also held that defendant No.2 is not a bonafide purchaser of the property.

6. This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook.

7. The learned counsel representing the appellant submits that the appellant had no notice of the agreement to sell and therefore, decree for specific performance should not have been passed. He submits that the First Appellate Court has erred in observing that defendant No.2 did not enter into the witness box, whereas, she appeared.

8. This Court has considered the submissions of the learned counsel representing the appellant.

9. It is evident that defendant No.1 became the owner on 31.10.2008, whereas, the sale deed in favour of defendant No.2 was executed on 20.11.2008 i.e. within a period of 20 days from the date the defendant No.1 became the owner.

10. On appreciation of evidence, both the Courts have found that defendant No.1 has failed to prove that she is a bonafide purchaser. The

Court below found that defendant No.1 mischievously executed the registered sale deed in favour of defendant No.2 in order to defeat the rights of the plaintiff. In fact, the appellant has purchased the property by executing two registered sale deed from Sh. Balbir (defendant No.1). With respect to the second sale deed, RSA-3460-2018, titled as “Suresh Kumari Vs. Maya Chand and others”, has been decided by a judgment of the even date. In that appeal also, it has been held that she is not a bonafide purchaser.

11. Keeping in view the aforesaid facts, no ground to interfere with the concurrent findings of fact is made out.

12. Dismissed accordingly.

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

November 30th, 2023

(ANIL KSHETARPAL)
JUDGE

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