

RSA-4755 of 2018 (O&M)

2023:PHHC:111822

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

RSA-4755 of 2018 (O&M)
Date of decision: 24.08.2023

Dawood and others

.....Appellants

Versus

Ayub and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Abhinav Sood, Advocate,
for Mr. Vikram Singh, Advocate,
for the appellants.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 04.11.2016 passed by the Court of learned Additional Civil Judge (Senior Division), Mewat, whereby suit of the appellant-plaintiff for possession by way of specific performance was dismissed as well as against the judgment and decree dated 12.03.2018 passed by the Court of learned Additional District Judge, Mewat, vide which the appeal filed by the appellant-plaintiff against the judgment and decree of the trial Court, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Briefly, the plaintiffs filed a suit for possession by way of specific performance pleading therein that defendant No.1 being owner in possession of the land bearing Khewat/Khata No.125/149, Rect. No.49, Killa No. 18(8-0) to the extent

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of 1/4th share which comes to 2 kanals 00 marlas; Khewat/Khata No.135/167-168, 136/169, Rect No. 33, Killa No. 24/1(7-0), 13/2(1-10), 14/2(4-03), 14/2(3-17), 16/3(1-19), 17(7-04), 24/2(1-0) measuring 26 kanals 13 marlas, to the extent of 1/2 share which comes to 13 kanals 06 marlas, Khewat/Khata No.147/180, Rect. No.46, Killa No.15/2(0-19), 17(8-0), 23/3(4-10), 24(7-09), 26(0-11), measuring 21 kanals 09 marlas, to the extent of 29/429th share which comes to 1 kanal 09 marlas; Khewat/ Khata No.148/181, Rect. No.32, Killa No.29/2 (9-18), 22/2(1-03), measuring 2 kanals 01 marlas, to the extent of 1/4th share which comes to 00 kanals 10 marlas; Khewat/Khata No.149/182, Rect. No. 48, Killa No. 3/2(4-10), 4(8-0), 7/2(2-17), 8(8-0), 9(5-06), 13(7-12), measuring 36 kanals 05 marlas, to the extent of 1/2 share which comes to 18 kanals 02 marla; Khewat/Khata No.145/178, Rect. No.49, Killa No.13(5-16), 23/1 (1-01), measuring 6 kanals 17 marlas to the extent of 1/4th share which comes to 1 kanal 14 marlas; Khewat/Khata No. 144/177, Khasra No.240 (0-19), 245/1(0-18), measuring 1 kanal 17 marlas, to the extent of 1/4th share which comes to 00 kanal 09 marlas; Khewat/Khata No. 146/179, Khasra No.238(1-2), measuring 1 kanal 02 marlas, to the extent of 1/4th share which comes to 00 kanals 10 marla, Khewat/Khata No. 375/454-455, Rect. No.32, Killa No.21/1/1 (1-15), 22/1/1 (1-01), 21/1/1 (3-19) measuring 6 kanals 01 marlas, to the extent of 1/4th share which comes to 1 kanal 10 marlas; Khewat/Khata No.376/456, Rect. No.46, Killa No. 16/2 (4-10), to the extent of 1/4th share which comes to 1 kanal 02 marlas, Khewat/Khata No.378/458-459, Rect. No.48, Killa No.12 (3-

08), to the extent of 1/2 share which comes to 1 kanals 14 marla; Khewat/Khata No.293/365, Rect. No.31, Killa No.11/2 (4-17), 20 (7-19), 21(7-07), measuring 20 kanals 03 marla to the extent of 46/403th share which comes to 2 kanals 06 marla; Khewat/Khata No.303/376, Khasra No.244/1 (1-02), to the extent of 1/4th share which comes to 00 kanals 05 marlas, grand total measuring 45 kanals 17 marlas, situated within the revenue estate of village Badka Alimuddin, Tehsil Nuh, District Mewat (hereinafter referred to as 'suit land') had entered into an agreement to sell the same with the plaintiffs vide agreement to sell dated 12.5.2010 for a total sale consideration of Rs.54,44,687/- and at the time of the execution of the alleged agreement to sell, defendant No.1 had received an amount of Rs.34,44,687/- as earnest money/part payment from the plaintiffs and it was agreed between the parties that the balance sale consideration would be paid at the time of execution of the sale deed. It has been further averred by the plaintiffs that the last date for execution and registration of the sale deed was fixed as 10.05.2012 and the defendant No.1 assured the plaintiffs that the suit land was free from all encumbrances except the loan with State Bank of India, Nuh and it was further agreed between the parties that defendant No.1 shall clear the loan before the date of registration and execution of the sale deed. It has been further averred by the plaintiffs that it was further agreed between the parties that the entire expenses for registration and execution of sale deed would be borne by the plaintiffs and it was further agreed between the parties that the construction raised by the defendant No.1 on the suit land would be demolished and

vacated prior to the execution of the sale deed. It has been further averred by the plaintiffs that it was further agreed between the parties that in case the defendant No.1 failed to get the sale deed executed then in that case the plaintiffs will have a right to get the sale deed executed through the medium of Court and in that case defendant No.1 will be responsible for all the costs and expenses. It has been further averred by the plaintiffs that it was further agreed between the parties that in case the plaintiffs fail to get the sale deed executed and registered, then their earnest money shall be forfeited and agreement shall be deemed to be cancelled. It was further agreed between the parties that defendant No.1 will not sale, lease, mortgage or create any charge over the suit land and that he and his legal heirs would be bound by the terms and conditions of the agreement to sell entered into between the parties. It was further agreed between the parties that in case the defendant No.1 failed to clear the loan on the suit land in that case loan would be payable by the plaintiffs out of the balance sale consideration of the suit land. It has been further averred by the plaintiffs that they were always ready and willing and are still ready and willing to perform their part of contract, however, defendants in collusion with each other and with an ulterior motive to play fraud upon the plaintiffs and to frustrate the legal and valid agreement to sell dated 12.5.2010 have got executed a forged and bogus sale deed dated 12.12.2011 purported to be executed by defendant No.1 in favour of defendant No.2 for a bogus sale consideration of Rs.1,04,14,500/-. It has been further averred by the plaintiffs that the said sale deed is illegal, null and void and not binding

upon the rights of the plaintiffs being a prior charge on the suit land and the defendant No.1 was not competent to transfer the title of the land in favour of defendant No.2. It has been further averred by the plaintiffs that the defendant No.1 by executing the forged sale deed dated 12.12.2011 has violated the terms and conditions of the agreement to sell and has refused to perform his part of the contract. It has been further averred by the plaintiffs that they on numerous occasions requested the defendants to execute and get the sale deed registered in respect of the suit land in favour of the plaintiffs as per the agreement to sell dated 12.05.2010, however, defendants refused to accede to the just and genuine requests of the plaintiffs.

3. Upon notice, defendant No.1 appeared before the Court. However, when the case was fixed for filing written statement on behalf of defendant No.1, none appeared on his behalf and therefore, defendant No.1 was proceeded against ex-parte vide order dated 26.04.2013 passed by learned Lower Court.

4. Upon notice, defendant No.2 filed her written statement whereby she rebutted the present suit of the plaintiffs by taking preliminary objections regarding maintainability of the present suit, plaintiffs having no *locus standi* and cause of action to file the present suit, estoppel, plaintiffs not coming to the Court with clean hands etc. On merits, defendant No.2 rebutted the present suit of the plaintiffs by submitting that she had purchased the suit land from the defendant No.1 vide a registered sale deed bearing vasika No.4887 dated 27.12.2011 for a valuable sale consideration of Rs.1,04,14,500/- and at

the time of execution of the sale deed the alleged agreement dated 12.05.2010 was not in existence and in fact the same has been got prepared ante-dated by the plaintiffs in collusion with the defendant No.1, stamp vendor, scribe, witnesses and other henchmen with the ulterior motive to defeat the legal rights of answering defendant and therefore, the same is not binding upon the answering defendant. It has been further submitted by the answering defendant that after execution of the sale deed in her favour the plaintiffs and defendant No.1 colluded and they hatched a conspiracy to injure her rights and to defeat the sale deed dated 27.12.2011 and to grab the suit land and as such they had got prepared the alleged agreement dated 12.05.2010 which is ante-dated, illegal, null and void, fraudulent, *non est* with the help of other persons. It has been further submitted by defendant No.2 that after purchasing the suit land from the defendant No.1 vide registered sale deed she became owner in possession of the same and plaintiffs have no right, title or interest of any kind in the suit land as defendant No.2 is a *bona fide* purchaser of the suit land for consideration from the defendant No.1. Rest of the averments of the plaint have been specifically denied and dismissal of the suit was prayed for.

5. From the pleadings of the parties, the learned trial court had framed the following issues: -

“1. Whether the defendant No.1 executed agreement to sell dated 12.05.2010 in favour of plaintiffs for total sale consideration of Rs.54,44,687/-? OPP

2. Whether the plaintiffs have paid earnest money of Rs. 34,44,687/- and sale deed was to be executed on 10.5.2012 ? OPP.

3. If the above said issues are proved whether the plaintiffs are entitled for possession of the suit property by way of decree of specific performance of contract or alternative relief of refund of money? OPP.

4. Whether the defendant No.2 is bonafide purchaser? OPD.

5. Whether the suit of the plaintiffs is not maintainable ? OPD

6. Relief.”

6. Parties led oral as well as documentary evidence in support of their respective contentions.

7. After hearing arguments and after appreciating evidence on record, trial Court dismissed the suit of plaintiff vide judgment and decree dated 04.11.2016.

8. Aggrieved against the judgment and decree of the trial Court, plaintiffs preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 12.03.2018.

9. Learned counsel for the appellants contended that findings of both the Courts below are erroneous in the eyes of law. He further contended that Courts below have wrongly observed that agreement to sell Ex.P1 executed by defendant No.1 in favour of the plaintiff-appellant was suspicious. He further contended that the Courts below have failed to consider that there is not even a single document on the file which could establish the fact that defendant No.2 was a *bona fide* purchaser of the suit land. He further contended that Courts below have failed to appreciate that inadequacy or the lesser amount would not be a ground to presume that agreement to sell is ante dated or the

below have wrongly observed that plaintiffs did not have sufficient means to pay such a huge amount as earnest money at the time of execution of the agreement to sell.

10. I have heard learned counsel for the appellants and perused the record.

11. I do not find any force in the contentions raised by the learned counsel for the appellants. Appellants have failed to prove that agreement to sell Ex.P1 was a genuine document as they had not produced the scribe of agreement to sell and thus withheld best evidence, despite it being available. Moreover, agreement in question had not been written by a regular scribe and it was not written on regular stamp paper and special adhesive stamp was affixed on plain paper which was purchased by respondent No.1. Further, the land in question is situated in village Badka Alimuddin, Tehsil whereas the plaintiff No.1 is resident of village Badka Alimuddin, plaintiff No.2 is resident of village Kanwarsika, Tehsil Nuh, District Mewat and plaintiff No.3 is resident of village Dewla, Tehsil Nuh, District Mewat but the stamp was purchased from other place. The Courts below have rightly observed that the appellants had failed to explain how they arranged a huge amount of Rs.34,44,687- for making payment of earnest money to the defendant No. 1. The witness of the plaintiffs has also admitted that at the relevant time, the market rate of the suit property was about 15/20 lac per acre. Thus, the sale consideration shown in Ex.P-1 is too meagre. This creates doubt on the authenticity of Ex.P-1. PW4 had admitted that stamp is sold only when the stamp

paper is not available and on that day of sale of stamp for execution of Ex.P-1, the stamp paper was available. He could not explain the reason for not selling the stamp paper to the defendant No.1 and why the stamp of Rs.10- was sold to him for preparation of Ex.P-1. Perusal of the record shows that the plaintiff No.1 is the step son of defendant No.1 as the mother of plaintiff No.1 had performed karewa marriage with defendant no. 1 after death of her husband. The attesting witness had also married with the daughter of defendant No.1. Thus there are chances of collusion between the plaintiffs with defendant no.1 with the motive to divest the defendant No.2 of her rights created after registration of sale deed in respect of the suit property. Defendant no. 1 had already executed a release deed of some land out of the suit property in favour of some other person vide release deed Ex.D-1 on 31.08.2009. Thus he was not the owner of the entire suit property at the time of execution of the alleged agreement to sell. Agreement to sell has been shown to have been executed in favour of all the three plaintiffs but as per this document Ex.P-1, the entire earnest money was paid by plaintiff no.2, which creates doubt on the genuineness of Ex.P-1. Moreover, when such a huge amount was being paid by the plaintiffs to defendant No.1 towards earnest money, why the target date was fixed after two years of the execution of the agreement to sell. The plea taken that there was loan against the suit property which was to be cleared, however, the loan amount was meagre Rs.58,000- which could have been paid by the plaintiffs or could have been adjusted in the remaining sale consideration. Lower Appellate Court has rightly

placed reliance on the judgment of the Hon'ble Apex Court in case titled Hansa v. Gandhi, 2013 (2) LLR 221 (SC) had held that "if the contention of the plaintiffs is that the subsequent buyers are not bonafide purchasers, the plaintiffs must have pleadings to that effect. As no averment was made by the plaintiffs that the subsequent buyers were not bonafide purchasers for consideration, the subsequent buyers could not have adduced any evidence to show that they were bonafide purchasers for consideration. Had such a plea been raised by the plaintiffs in their pleadings, the subsequent buyers could have adduced necessary evidence to prove their case. Thus the burden of proof would lie on the plaintiffs to plead and prove that the subsequent buyers were not bonafide purchasers." It is not the case of the plaintiffs that the defendant no.2 was not a bonafide purchaser for consideration. Thus in absence of the specific pleadings of the plaintiffs to that effect, the defendant no. 2 is proved to be the bonafide purchaser for valuable consideration.

12. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show that the same are perverse or illegal or based on mis-reading, non-reading or mis-appreciation of the material evidence on record.

13. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

14. In view of the above, present appeal is dismissed.

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15. Pending application(s), if any, stand disposed of accordingly.

24.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No