

2024:PHHC:003115
**140 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

ESA-2-2024 (O&M)
Date of decision: 10.01.2024

Sunita

....Appellant

Versus

Suresh Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vivek Suri, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

1. This is the objector's Execution Second Appeal filed against the concurrent findings of fact arrived at by the courts below, while dismissing his objections.

2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

3. Late Sh.Jai Parkash Shastri was the owner of the property. He entered into an agreement to sell in favour of Suresh Kumar on 30.05.2011, with respect to the land measuring 195 square yards comprised in khasra no.7681 and 7683. As per the agreement to sell, the sale deed was to be executed on 30.06.2011. Sh.Jai Parkash Shastri died on 30.12.2011. Sh.Suresh Kumar filed a suit for possession by way of the specific performance of the agreement to sell on 09.03.2012, which was duly contested by the defendants who are the heirs of Late Sh.Jai Parkash Shastri. Ultimately, as the

agreement to sell was found genuine, the suit was decreed on 30.08.2018.

4. The appellant claims that during the pendency of the suit, she purchased a part of the property from Rishu s/o late Sh.Jasmer son of Late Sh.Jai Parkash Shastri. Both the courts, on appreciation of evidence, found that the appellant is a purchaser, who is governed by the rule of lis pendens, as provided under Section 52 of the Transfer of Property Act, 1882 (hereinafter referred to as '1882 Act').

5. The learned counsel representing the appellant while contending that she is a bonafide purchaser and she was not aware of the pending litigation, prays that her rights may be protected. He further submits that the appellant has made a lot of improvements by investing a huge amount of money in the house and therefore, her rights in the aforesaid property deserve protection.

6. This Court has considered the submissions made by the learned counsel representing the appellant.

8. Section 52 of the '1882 Act' provides that all the sale transactions that take effect during the pendency of the suit, with regard to the suit property, shall be subservient to the result of the pending litigation. Ordinarily the protection of plea of bonafide purchaser is not available to the purchaser of the property lis pendens.

9. With reference to the second argument, it may be noted that the courts are expected to decide the cases on the basis of law governing the subject. The courts are expected to maintain a positive balance between the interests of the parties in dispute.

10. On the one hand, the respondent-Suresh Kumar has already been waiting for implementation of the decree for more than last 5 ½ years of the passing of the decree. The litigation went on a period of more than 6 years. The court has found that the agreement to sell was already executed by Late Sh.Jai Parkash Shastri in favour of Sh.Suresh Kumar (respondent).

11. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

12. Hence, dismissed accordingly.

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

10.01.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE