

2024:PHHC:050431

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RSA-1101-1990(O&M)

...Appellant

...Respondents

3. Kartar Chand (defendant No.1) was owner of the land measuring 12 kanals 13 marlas. He entered into an agreement to sell in favour of defendant No.2 on 12.03.1980. Subsequently, he also entered into another

agreement to sell with regard to same property in favour of the plaintiffs on 06.06.1980. The plaintiffs filed a suit for possession by way of specific performance of the agreement to sell dated 06.06.1980. The defendants contested the suit on the ground that the agreement to sell dated 06.06.1980 was merely a sham transaction.

4. During the pendency of the suit, defendant No. 1 (Kartar Chand) executed the sale deed in favour of defendant No.2, namely, Kartar Singh son of Ram Singh.

5. The trial Court identified the following issues for adjudication:-

1. *Whether agreement to sell dated 6.6.80 is enforceable at law? OPD.*
2. *Whether the agreement dated 6.6.80 is sham transaction, if so to what effect? OPD.*
3. *Whether the plaintiff has ever been ready and willing to perform his own part of the contract? OPP.*
4. *Whether the plaintiff is entitled to the specific performance of the contract dated 6.6.80? OPP.*
- 4a. *Whether defendant No. 2 Kartar Singh is bonafide purchaser of the land in dispute for value and consideration and without notice of the agreement to sell of the plaintiff? OPD.*
- 4b. *Whether defendant No. 1 executed agreement to sell dated 12.3.80 in favour of defendant No. 2? OPD.*
- 4c. *If issue No. 4b is proved, whether agreement is illegal, fictitious, bogus and sham transaction? OPP.*
5. *Relief.*

6. Both the Courts below have found that execution of the agreement to sell dated 06.06.1980 is surrounded by suspicious circumstances. It has been

found that the plaintiffs had knowledge of the previous agreement to sell entered by Kartar Chand in favour Kartar Singh on 12.03.1980. Thus, the suit filed by the plaintiffs was dismissed, which in appeal has been affirmed.

7. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

8. Learned counsel representing the appellant submits that the execution of the agreement to sell dated 06.06.1980, is admitted particularly when the defendants have alleged that the agreement to sell is a sham transaction, which was executed to nullify the effect of agreement to sell dated 12.03.1980. He submits that both the Courts below have erred in dismissing the plaintiffs suit on the ground that the agreement to sell was not scribed by regular scribe, none of the marginal witnesses was from the same village, one of the marginal witnesses, namely, Naranjan Singh was brother-in-law of defendant No.2 and the land was already mortgaged with the Central Government, however, in the agreement to sell, it is recorded that it was free of any charge. He further submits that the findings of fact has been wrongly recorded by the Courts below.

9. On a Court's question as to how the plaintiffs will be entitled to get any relief particularly when execution of the agreement to sell dated 12.03.1980 is proved, learned counsel representing the appellant submits that the appellant can be compensated with the alternative relief.

10. This Court has considered the submissions made by learned counsel representing the parties.

11. Even, if other findings recorded by the Courts below with regard

to doubt regarding genuineness of the agreement to sell dated 06.06.1980 is ignored, still, there is positive finding that the plaintiffs had knowledge of the previous agreement to sell dated 12.03.1980. Moreover, the legal representatives of respondent No.1 are not represented.

12. Keeping in view the aforesaid facts, no effective order can be passed. Defendant No.2 cannot be made liable because he is a purchaser of the property, pursuant to an agreement to sell in his favour, which was prior in the point of time from the agreement to sell in favour of the plaintiffs. The plaintiffs have alleged that Rs. 4,000/- was paid at the time of execution of the agreement to sell.

13. Hence, no ground to interfere is made out.

14. Dismissed.

15.04.2024

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Whether speaking/reasoned :
Whether Reportable :

(ANIL KSHETARPAL)
JUDGE

Yes	No
Yes	No