

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

112

RSA-2966-1994  
Date of decision: 02.05.2024

HANS RAJ ..Appellant

Versus

RAJ PAL & ORS. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Bhag Singh, Advocate  
for the appellant.

Mr. A.S. Virk, Advocate  
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. This is an old appeal, which has come up for hearing after a period of 30 years.
2. In a suit for specific performance of the agreement to sell, the First Appellate Court has granted the discretionary relief of refund of earnest money along with interest to the plaintiff. In this regular second appeal, the correctness of the aforesaid finding of the First Appellate Court is challenged.
3. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.
4. Sh. Ram Saran, Sh. Amar Nath and Sh. Krishan Lal were owners in the joint land measuring 31 kanal and 19 marlas situated in village Dhanaura. They allege to have executed an agreement to sell in favour of their nephew Sh. Hans Raj and Sh. Subhash Chand on 21.04.1977. As per the agreement to sell, the total sale consideration was Rs.15,000/-. Sh. Ram

Saran and Sh. Krishan Lal were paid Rs.5,000/- each. As per the agreement to sell the sale deed was to be executed and registered on 20.04.1980. Sh Ram Saran sold his share for Rs.6,000/- in favour of defendant No.4 Sh. Raj Pal vide registered sale deed dated 28.08.1980. Sh. Krishan Lal sold his share in the joint land in favour of Sh. Kartar Chand. Thereafter, the plaintiff filed a suit for specific performance of the agreement to sell. The trial Court found that Sh. Amar Nath has not signed the agreement to sell. The suit was partly decreed to the extent of share of Sh. Ram Saran only. The First Appellate Court has held that defendant No.4 Sh. Raj Pal is a bonafide purchaser, therefore, the appeal filed by Sh. Raj Pal is accepted.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the scanned copy of the lower Court record.

6. The learned counsel representing the appellant while referring to the cross-examination of Sh. Raj Pal submits that he did not make any bonafide inquiry before entering into the agreement to sell. He submits that the First Appellate Court has erred in granting the alternative relief of refund of earnest money along with interest while holding that Sh. Raj Pal is a bonafide purchaser.

7. Per contra, the learned counsel representing the respondents submits that in fact, the agreement to sell was a result of collusion between the nephew and uncles as Sh. Subhash never joined Sh. Hans Raj in filing the suit. He further submits that Sh. Hans Raj never challenged the correctness of sale deed executed by Sh. Krishan Lal in favour of Sh. Kartar Chand. He further submits that there is unexplained time lapse of more than

three years between the date of execution of the agreement to sell and the target date for execution and registration of the sale deed. He further submits that the plaintiff has filed the suit only after the sale deed was executed in favour of Sh. Raj Pal on 28.08.1980.

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

9. There is a substance in the argument of the learned counsel representing the appellant with respect to the correctness of the findings of the First Appellate Court on the aspect that he is a bonafide purchaser. However, the facts as pointed out by the learned counsel representing the respondents does show that the plaintiff is not entitled to discretionary relief of specific performance of the agreement to sell. No doubt, Sh. Krishan Lal while appearing in evidence has stated that he executed the sale deed in favour of Sh. Kartar Chand with the consent of Sh. Hans Raj. Obviously, Sh. Hans Raj was not a serious purchaser. If he really wanted to purchase the property, he would not have permitted one of his uncles to sell the property in favour of Sh. Kartar Chand, who is not related to the family. Moreover, the suit has been filed by the plaintiff only after the sale was executed in favour of Sh. Raj Pal on 28.08.1980.

10. Keeping in view the aforesaid facts, this Court does not find it appropriate to exercise discretion in favour of the appellant. Before amendment of the Specific Relief Act, 1963, the relief of specific performance of the agreement to sell was discretionary. Sh. Raj Pal is not related to the family. He is a stranger to the family. He has purchased the property on payment of the sale consideration.

11. In the end, the learned counsel representing the appellant submits that the agreement to sell and the payment of earnest money of Rs.5,000/- has been proved to have been paid to Sh. Ram Saran, which should be refunded. However, in the facts of the case, the plaintiff is held entitled to refund of earnest money of Rs.5,000/- along with interest at the rate of 6% against Sh. Ram Saran, however, it shall not affect the rights of Sh. Raj Pal (respondent No.1).

12. With these observations, the appeal is disposed of.

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

May 02<sup>nd</sup>, 2024

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(ANIL KSHETARPAL)  
JUDGE

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