



Hari Singh (since deceased) through LRs. ...Appellant

Kirpal Singh and another ...Respondents

Present: Mr. Sanjeev Manrai, Sr. Advocate with
Ms. Neha, Advocate
for the appellant.

ANIL KSHETARPAL, J. (Oral)

1. In this Execution Second Appeal, the appellant assails the correctness of concurrent findings of fact arrived at by the Executing Court which in appeal has been affirmed by the First Appellate Court while dismissing his objection petition.

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

3. Smt. Kasturi widow of Sh. Tej Pal @ Teju entered into agreement to sell on 10.10.1982 in favour of Sh. Kirpal Singh son of Sh. Rulda Singh. She failed to honour the agreement to sell forcing Sh. Kirpal Singh to file a suit on 14.12.1983 for possession by way of specific performance of the agreement to sell, which was decreed on 24.09.1984. Smt. Kasturi and other heirs of Sh. Tej Pal @ Teju sold the suit property in favour of the appellant-Sh.Hari Singh vide registered sale deed dated 13.12.1982. Smt. Kasturi filed an application under



Order IX Rule 13 of the Code of Civil Procedure, 1908, to set aside the *ex parte* decree which was dismissed in default on 04.10.1994. In execution of the decree, the sale deed has already been executed in favour of Sh. Kirpal Singh (decree-holder). The appellant, who has purchased from Smt. Kasturi and others filed objection petition claiming to be *bona fide* purchaser. He also claimed that the agreement to sell dated 10.10.1982 was result of fraud, misrepresentation and collusion.

4. Upon appreciation of evidence, both the Courts below have dismissed his objection petition.

5. Sh. Kirpal Singh's son of Sh. Rulda Singh filed a Civil Suit on 27.11.1986, challenging the correctness of the sale deed in favour of Sh. Hari Singh, which was dismissed on 18.09.1991.

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book alongwith the requisitioned record.

7. Learned Senior counsel representing the appellant submits that the sale deed in favour of the appellant is prior in point of time and the agreement to sell dated 10.10.1982 and the *ex parte* decree is a result of fraud and misrepresentation.

8. *Per contra*, the learned counsel representing the respondent submits that Smt. Kasturi filed an application under Order IX Rule 13 of the CPC, which was dismissed on 04.10.1994. He submits that the judgment passed in the case of Sh. Rulda Singh shall not be binding as the respondent-Sh.Kirpal Singh (decree-holder) is not party to the aforesaid suit.

9. This Court has considered the submissions made by the learned counsel for the parties.

10. The prior agreement to sell dated 10.10.1982 is in favour of Sh. Kirpal Singh, hence, any subsequent sale deed executed by Smt. Kasturi and others would be subservient to the rights of the agreement holder. Sh. Kirpal Singh filed a suit, which has been decreed. Pursuant thereto, the sale deed has also been executed. Although, the learned Senior counsel representing the appellant made sincere attempts, however, he failed to draw the attention of the Court to the ingredients of fraud as alleged by the appellant. He stated that an oral agreement to sell was entered into. It will be noted that the aforesaid oral agreement to sell has been accepted by the trial Court after appreciating evidence. Moreover, Smt. Kasturi has also filed an application under Order IX Rule 13 of the CPC, which has already been dismissed.

11 Section 48 of The Transfer of Property Act, 1882 gives a superior right to the previous purchaser.

12. Keeping in view the aforesaid facts, no ground to interfere is made out.

13. Dismissed.

22.05.2024 neeraj	(ANIL KSHETARPAL)	
	JUDGE	
Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No