

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.ESA-42-2023 (O&M)

Ramesh Chand
....Appellant

Versus

Ved Prakash Gupta and another
..Respondents

1.ESA-46-2023 (O&M)

Ramesh Chand
....Appellant

Versus

Ved Prakash Gupta and another
..Respondents

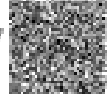
Date of decision: 17.05.2024

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rakesh Sobti, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

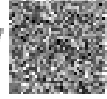
1. These two connected Execution Second Appeals i.e ESA-42-2023 and ESA-46-2023 have been filed by the appellant, who claim to be a third party objector.
2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.
3. Pardeep Kumar was owner of the property. He executed an agreement to sell in favour of Ved Prakash Gupta on 03.11.2011, for a total sale consideration of Rs.10,00,000/-, out of which Rs.5,00,000/- was received as earnest money. The sale deed was to be executed and



registered on 31.03.2012. On 31.03.2012, the date for execution of the sale deed was extended to 31.05.2012. Pardeep Kumar is alleged to have sold property in favour of Mukesh, Rajesh, Smt. Rajni and Smt. Bindu vide registered sale deed dated 23.05.2012. Ved Prakash Gupta filed a suit for possession by way of specific performance of the agreement to sell, which was decreed on 16.08.2012. The suit was filed on 31.07.2015. Pardeep Kumar filed the appeal, which was also dismissed. In between, vendors from Pardeep Kumar transferred the property in favour of the appellant. When the decree for possession was sought to be implemented, the appellant filed objection petition. He also filed an application for recall of the warrants of possession. Both the courts dismissed the same. Learned counsel representing the appellant submits that the appellant was not impleaded as party in the suit though the sale deed in favour of Mukesh Kumar etc. was before filing of the suit. He submits that the decree obtained at the back of the appellant is not binding on him. He relies upon the judgment passed by the Supreme Court in **Seethakathi Trust Madras vs. Krishnaveni 2022 Live Law (SC) 58** and **Vimala Ammal vs. C.Suseela and others 1991 CivCC 632**.

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

5. On a careful reading of the judgment passed by the Supreme Court, it is evident that in Para 24 of **Seethakathi Trust Madras's case (supra)** the court has recorded finding that the plaintiff



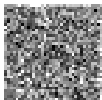
was fully aware of the prior registered transaction, which are extracted as under:-

*“24. In our view, it is not necessary to go into the issue of adverse possession as both parties are claiming title. The crucial aspect is the decree obtained for specific performance by the Respondent and the manner of obtaining the decree. The Respondent was fully aware of the prior registered transaction in respect of the same property originally in favour of Niraja Devi. This is as per the deposition of her manager. In such a scenario it is not possible for us to accept that a decree could have been obtained behind the baack of a bona fide purchaser, more so when the transaction had taken place prior to the institution of the suit for specific performance. Suffice to say that this view would find support from the judgments in **Vidyadhar v. Manikrao and Man Kaur v. Hartar Singh Sangha**.*

6. In that context, the Supreme Court held that the decree, without impleading the bonafide purchaser, is not binding on him. However, in this case, there is no evidence or finding of the courts below to prove that Ved Prakash Gupta, the plaintiff has no knowledge of the sale deed.

7. It may be noticed that the appellant is not a third party objector. He is representative of Pardeep Kumar. Pardeep Kumar sold the property in favour of Mukesh Kumar etc., who in turn sold to the appellant. The appellant has also sold the property in favour of another person. The agreement to sell in favour of Ved Prakash Gupta has been found to be valid, genuine and enforceable. Pardeep Kumar never disclosed that he has sold the property. The rights of the subsequent purchaser shall be subservient to the rights of the prior agreement holder.

Section 48 of the Transfer of Property Act, 1882 provides that rights of



the subsequent purchaser are subject to the rights of a prior purchaser. In this case, though the sale deed has been executed pursuant to the court decree, however, the rights of Ved Prakash Gupta are flowing from the agreement to sell dated 03.11.2011. It was Pardeep Kumar who failed to honour the agreement to sell. In these circumstances, it would not be appropriate to reject the claim of Ved Prakash Gupta. Moreover, the appellants may, if so advised, seek their remedy either against Mukesh Kumar etc. or Pardeep Kumar. However, the rights of Ved Prakash Gupta cannot be defeated.

- 8. Keeping in view the aforesaid facts, no ground to interfere is made out.
- 9. Hence, dismissed.
- 10. All the pending miscellaneous applications, if any, are also disposed of.

17.05.2024
rekha

(ANIL KSHETARPAL)
JUDGE

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