

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-189-2020 (O&M)****Reserved on : 16.10.2024****Pronounced on : 29.10.2024**

Vikas Bansal

....Appellant

VERSUS

Prem Masih & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. G.C. Shahpuri, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by plaintiff-appellant challenging the judgments and decrees dated 28.04.2015 and 08.07.2019 passed by the Trial Court and the First Appellate Court respectively dismissing his suit.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for possession by way of specific performance of agreement to sell dated 16.04.2009. It was averred that vide an agreement to sell dated 16.04.2009 the defendant-respondent No.1 had agreed to sell the suit property and Rs.70,000/- was given as earnest money and a receipt to this effect was also reduced into writing on the foot of the agreement to sell. It was mentioned in the agreement to sell that there was a court case going on regarding the suit property and that as and when the same was decided then the defendant-respondent No.1 would inform the plaintiff-appellant and the plaintiff-appellant would be bound to execute and get registered the sale

deed within one month from the date of decision of the case. It was further averred that the plaintiff-appellant had always been ready and willing to perform his part of the contract and had approached the defendant-respondent No.1 time and again to know about the progress of the case and every time he was assured that as and when the case is decided he would be informed. However, instead vide sale deed dated 13.04.2011 the defendant-respondent No.1 sold the suit property to defendant-respondent Nos.2 and 3. Hence, the suit for possession and declaration. The defendant-respondent No.1 was proceeded against ex-parte. The defendant-respondent Nos.2 and 3 contested the suit taking preliminary objections regarding maintainability, cause of action, estoppel and concealment of material facts. On merits it was pleaded that no agreement to sell the suit property was ever entered into by the defendant-respondent No.1 with the plaintiff-appellant and that the agreement to sell was a forged and fabricated document. Plea of bonafide purchaser without notice was also raised and that the suit property had been purchased after making necessary enquiries. No replication was filed.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to possession of the suit property by way of specific performance of the agreement to sell dated 16.04.2009 ? OPP
2. Whether the sale deed dated 13.04.2011 allegedly executed by defendant No.1 in favour of defendants No.2 and 3 is illegal, null and void ? OPP
3. Whether the present suit is not maintainable ? OPD
4. Whether the plaintiff has no cause of action to file the present suit ? OPD

5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD

6. Whether defendants No.2 and 3 are bonafide purchasers and their sale is liable to be protected under Section 41 of the Transfer of Property Act ? OPD

7. Relief.

4. The Trial Court dismissed the suit vide judgment and decree dated 28.04.2015 holding that the execution of the agreement to sell was not proved and also that the suit was time barred. Aggrieved by the judgment and decree passed by the Trial Court, an appeal was preferred by the plaintiff-appellant which appeal was dismissed by the First Appellate Court vide judgment and decree dated 08.07.2019. Hence, the present regular second appeal by plaintiff-appellant.

5. The learned counsel for the plaintiff-appellant would contend that both the Courts have erred in dismissing his suit. It is submitted that the execution of the agreement to sell was fully proved on the record and that the plaintiff-appellant was always ready and willing to perform his part of the contract. It is urged that the suit was within limitation.

6. Heard counsel for the plaintiff-appellant and perused the record.

7. In the present case though it has vehemently been argued by the learned counsel for the plaintiff-appellant that the execution of the agreement to sell stands proved, the facts coming on the record do not inspire confidence. A highly improbable story was put up by the plaintiff-appellant that on 16.04.2009 he met the defendant-respondent No.1 in the court premises and the parties executed an agreement to sell. The plaintiff-appellant did not know the defendant-respondent No.1 from before and on the intervention of a middleman the deal was struck. Earnest money was

paid and agreement to sell was executed. It does not stand to reason that two unknown persons meet by coincidence in the court premises and decide to enter into a transaction of immovable property. Further, the plaintiff-appellant has not been able to prove payment of the earnest money of Rs.70,000/- to the defendant-respondent No.1. The plaintiff-appellant has failed to prove that he had Rs.70,000/- with him on 16.04.2009 which he paid to the defendant-respondent No.1 as earnest money. The Trial Court also found that “ There is no name of any scribe on the agreement to sell Ex.P1. There is no mention of parentage and address of attesting witnesses. There are two signatures of defendant no.1 Prem Masih on back side of stamp. One in small font and another in large font. Both of them did not appear to be signed by same person. The signatures are overlapping. The possibility that the signatures of large font has been put after the previous signatures cannot be ruled out. In such eventuality, the examination of stamp vendor was helpful to decide the controversy that which signatures are actually appearing in his register. But the stamp vendor has not been called by the plaintiff. Otherwise, also, it is alleged that Narinder Kumar whose parentage and address is not mentioned on the agreement to sell Ex.P1 is the same witness who is mentioned in sale deed dated 13.4.11 Ex.P3 which is under challenge. Although, there is no conclusive evidence that both the persons are same but the plaintiff had the opportunity to get examine said Narinder Kumar to prove that he is also attesting witness on Ex.P3 meaning thereby he had the knowledge of execution of agreement to sell Ex.P1. But the plaintiff has been failed to get examine said Narinder Kumar. It is pertinent to mention here that it is not necessary for the plaintiff to get examine all the attesting witness of agreement of sale but when the

defendant are taking plea that they are bonafide purchaser of the suit property, and the plaintiff is alleging that one of the attesting witness on his agreement to sell is also the attesting witness on the alleged sale deed in favour of defendants then the said witness becomes very material witness and non examination of that witness amounts to withholding best available evidence with him and this fact goes against the plaintiff” . No meaningful arguments have been addressed to dislodge the said findings. Further, the learned counsel for the plaintiff-appellant has been unable to convince this Court that the suit was within limitation. The agreement to sell is dated 16.04.2009 while the suit was filed on 11.12.2012. No details of the litigation regarding the suit property were mentioned in the plaint the decision of which litigation was a condition precedent for executing the sale deed. Learned counsel for the plaintiff-appellant has not been able to point out to any cogent and reliable evidence on the record to make out a case as set up in the plaint. No other point was argued.

8. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

29.10.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO