



In the High Court of Punjab and Haryana, at Chandigarh

Executive Second Appeal No. 60 of 2023 (O&M)

Reserved On: 17.07.2024
Pronounced On: 23.07.2024

Jaggar Singh

... Appellant(s)

Versus

Deepak and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Aakash Singla, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. This Execution Second Appeal has been filed by the appellant to assail the correctness of the order passed by the First Appellate Court, which, in turn, has modified the Trial Court's order.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. Deepak (minor) is the son of Rajinder Singh son of Dhanna Singh. Dharampal son of Mulkh Raj was the owner of undivided share in the land comprised in khewat No. 102. In that very khewat, Dharampal and Jaggar Singh (appellant) are also the co-owners/co-sharers. On 05.10.2002, Dharampal had executed an agreement to sell with respect to the land measuring 4 kanals in favour of Deepak. It was agreed between the parties that the sale deed would be executed on 10.05.2003. Subsequently, Dharampal, vide sale deed dated 21.06.2004, had transferred the land measuring 5 kanals and 11 marlas in favour of Jaggar Singh (appellant). Deepak had filed a civil suit on 04.05.2006 for specific performance of the agreement to sell as Dharampal has refused to honour the agreement. Dharampal filed his written statement, however, he did not disclose the execution of the sale deed in favour of Jaggar Singh. The suit was decreed on 15.05.2010. Deepak had deposited

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the amount and the sale deed was executed. Deepak had filed an application in the Executing Court for setting aside the sale deed in favour of Jaggar Singh (appellant) which was allowed by the Trial Court, however, the First Appellate Court modified the same by declaring that the sale deed dated 21.06.2004 in favour of Jaggar Singh would not affect the rights of Deepak, decree holder. Hence, Jaggar Singh has filed this appeal.

3. The learned counsel representing the appellant has made the following submissions:-

- I) The appellant was not impleaded as party.
- II) The sale deed dated 21.06.2004 has not been challenged.
- III) Jaggar Singh, appellant, had no knowledge of the agreement to sell.
- IV) He further contends that the sale deed in favour of the appellant has been wrongly set aside.

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

5. By now, this is well settled that the sale deed executed by the proposed vendor, after entering into an agreement to sell, is neither required to be challenged nor required to be set aside. Secondly, Deepak has purchased only a small portion of the land measuring 4 kanals, whereas, Jaggar Singh has purchased the land measuring 5 kanals and 11 marlas. The First Appellate Court has already observed that the sale deed in favour of the appellant shall not affect the rights of Deepak, decree holder. It would be noted here that Deepak as well as Jaggar Singh have purchased undivided share in the unpartitioned land and both of them became co-owners in the same. It is also proved that Jaggar Singh was already in litigation with Chander Mohan, who is the brother of Deepak. He is also the co-sharer. Both the Courts below have found that he had the knowledge of the agreement to sell dated 05.10.2002 executed by Dharampal in favour of Deepak. Hence, Jaggar Singh's rights are subservient to Deepak's rights in the property.

6. As far as the argument of the learned counsel that he was not impleaded as a party is concerned, it would be noticed that Dharampal while



filing the written statement never disclosed the fact that he has already sold the property in favour of Jaggar Singh. In fact, it has been found by both the Courts below that Jaggar Singh, who was already in litigation with Chander Mohan, brother of Deepak, had purchased the land measuring 5 kanals and 11 marlas in order to defeat Deepak's rights. The agreement to sell dated 05.10.2002 in favour of Deepak and the sale deed in favour of Jaggar Singh was executed by the same Scribe. Moreover, Jaggar Singh was the co-sharer in the same khewat along with Deepak and Dharampal.

7. With reference to the requirement to challenge the sale deed in favour of the appellant, it would be noticed that in a very recent judgment passed by the Supreme Court in *Maharaj Singh and Others v. Karan Singh (Dead) through LRs and Others (2024) SCCOnline SC 1668*, it has been held that there is no requirement to order the cancellation of the sale deed which was executed after entering into an agreement to sell. While answering the question (d) and relying upon three Judges Bench judgment in *Lala Durga Prasad and Others v. Lala Deep Chand and Others (1953)2 SCC 509*, the Supreme Court held that in such a case where Section 19 (b) of the Specific Relief Act, 1963 (hereinafter referred to as "the 1963 Act") is applicable, the subsequent purchaser can be directed to execute the sale deed along with the original vendor and there is no necessity to pray for cancellation of the subsequent sale deeds. Under Section 19(b) of the 1963 Act, only transferee for value, who has paid his money in good faith and without notice of the original contract, is exempted from specific performance. In this case, both the Courts below have found that the appellant was not a bonafide purchaser and he had notice of the original contract.

7. Keeping in view the aforesaid facts, the appellant was not required to be impleaded as a party in the case. The net result of the sale deed in favour of Jaggar Singh would be that his rights are subservient to Deepak's rights.

8. Keeping in view the aforesaid facts, no ground is made out to interfere with the findings of facts arrived at by First Appellate Court.

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Hence, the present appeal is dismissed.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 23, 2024
“DK”

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