

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Reserved on 4th of November, 2024
Pronounced on 16th January, 2025**

Regular Second Appeal No.1149 of 2015 (O&M)

Shahid Ahmad

.....Appellant

Versus

Mohinder Kaur (since deceased) through her LRs and othersRespondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

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

Mr. Sanjay Jain, Advocate
for respondents No.1 and 2.

PANKAJ JAIN, J.

Plaintiff is in second appeal.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the plaintiff and the respondents as the defendants.

3. Plaintiff filed suit for specific performance propounding agreement to sell dated 30.03.2005 executed in his favour by defendant No.1. It was pleaded by the plaintiff that defendant No.1 agreed to sell house admeasuring 137 Sq. yards in his favour for a total sale consideration of Rs.3,00,000/-. Rs.2,75,000/- already stood paid to defendant No.1 and balance amount of Rs.25,000/- was to be paid on the date of registration of sale deed which was agreed to be 27.06.2005. Plaintiff claimed that he

always remained ready and willing to perform his part of the agreement. He appeared before the O/o Sub Registrar on 27.06.2005 along with balance sale consideration. However, defendant No.1 failed to perform his part and remained absent on the target date. Plaintiff being interested in purchase of the house, served defendant with the legal notice dated 04.08.2005 requesting him to come present in the O/o Sub Registrar on 27.09.2005. However, despite his repeated requests, defendant No.1 remained inert. Plaintiff thus prayed for possession of the suit property by way of specific performance of the agreement to sell dated 30.03.2005.

4. Defendant No.1 contested the suit denying execution of agreement to sell. Defendant No.1 claimed that he availed a loan of Rs.1,00,000/- from the plaintiff on 30.03.2005. As a security, the alleged agreement was got executed with the assurance that the same shall be cancelled on repayment of loan. Defendants No.2 and 3 claimed themselves to be *bona fide* purchasers of 1/2 portion of suit property on the strength of sale deed dated 24.10.2007 executed by defendant No.1 in their favour. Defendant No.4 Ram Rattan claimed that defendant No.1 entered into an agreement to sell dated 30.09.2004 in his favour agreeing to sell 1/2 western portion of the suit property for a total sale consideration of Rs.1,50,000/-. After defendant No.1 failed to perform his part, he instituted Civil Suit No.299 of 2005 against defendant No.1 on 14.01.2005. Court of First Instance granted *status quo qua* alienation of the property in his favour and against defendant No.1 on 18.01.2005. The same continued in operation till

19.07.2005. On 10.08.2005, Arjan Singh (defendant No.1) was again restrained from alienating the suit property. The said injunction remained in operation and the suit filed by defendant No.4 against defendant No.1 was decreed vide judgment & decree dated 12.03.2018. It was in execution of the said judgment and decree that defendant No.1 executed sale deed in his favour on 11.06.2008. Thus, the agreement to sell propounded by plaintiff was barred by principle of *lis pendens* and the same cannot be recognized to dislodge the rights of defendant No.4.

5. The Court of First Instance framed the following issues and tried the suit filed by the plaintiff :

- “1. Whether the plaintiff is entitled to the relief of possession by way of specific performance of agreement to sell dated 30.03.2005, as prayed for? OPP.
2. Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit? OPD.
3. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.
4. Whether the plaintiff has concealed the true and material facts from the court? OPD.
5. Relief.”

6. Considering the fact that agreement to sell in favour of defendant No.4 was dated 30.09.2004 and sale deed in favour of defendant No.4 was result of judgment & decree passed by Court of Competent Jurisdiction, Court of First Instance decreed the suit filed by the plaintiff *qua* eastern portion of the suit property.

7. Dissatisfied with the judgment and decree passed by the Trial Court, defendants No.2 & 3 filed appeal.

8. Lower Appellate Court holding defendants No.2 & 3 to be *bona fide* purchasers for a valuable consideration, modified the decree passed by the Trial Court. Plaintiff has been awarded alternate relief of recovery of Rs.5,50,000/- i.e. doubled the amount of earnest money paid by him.

9. Counsel for the appellant has assailed the finding recorded by the Lower Appellate Court to submit that defendants No.2 and 3 cannot be held to be *bona fide* purchasers and the plaintiff thus, needs to be awarded the main relief.

10. Counsel representing respondents No.2 and 3 submits that plaintiff failed to prove his readiness and willingness. As per the case pleaded by the plaintiff, target date was 27.06.2005, yet the present suit was instituted only on 13.09.2006 i.e. after more than a year after the target date. The plaintiff never came in possession of the suit property. Defendants No.2 and 3 are *bona fide* purchasers for a valuable consideration. Plaintiff in his cross-examination admitted that he has seen the construction being raised by defendants No.2 and 3 on the suit property, but he never objected to it. Defendants No.2 and 3 having spent considerable amount on renovation of the property, need not be ousted.

11. I have heard counsel for the parties and have carefully gone through records of the case.

12. So far as suit of the plaintiff *qua* the portion sold to defendant No.4 is concerned, the decree passed by the Trial Court has attained finality. The only issue remains is w.r.t. 1/2 eastern portion purchased by defendants No.2 and 3.

13. At the outset, this Court is of the considered view that defendants No.2 and 3 cannot be held to be *bona fide* purchasers having purchased the property during the pendency of *lis*. Thus, finding recorded by the Lower Appellate Court to that effect cannot be sustained. However, it needs to be noticed that in order to succeed for the main relief, plaintiff has to plead and prove his readiness and willingness throughout. As per the pleaded case of the plaintiff, after defendant No.1 failed to come present before the Sub Registrar on 27.06.2005, he served legal notice calling upon defendant to come present in the O/o Sub Registrar on 27.09.2005. There is no document on record to prove that the plaintiff came present in the O/o Sub Registrar on 27.09.2005. There is no evidence to show that plaintiff remained ready and willing to get the sale deed executed on the said date. Though the plaintiff has proved on record legal notice dated 04.08.2005 whereby he called upon defendant No.1 to come present in the O/o Sub Registrar, Ambala on 27.09.2005, but there is no evidence as to what transpired on 27.09.2005. A vital link in the story projected by the plaintiff has gone amiss

14. In view of above, this Court finds that even though the reasoning recorded by the Lower Appellate Court in favour of defendants

No.2 & 3 of them being *bona fide* purchasers, cannot be sustained, yet there is no reason to grant main relief of specific performance to the plaintiff. Resultantly, the decree passed by the Lower Appellate Court *qua* alternate relief granted to the plaintiff, is ordered to be maintained though for different reason.

- 15. The instant appeal is ordered to be **dismissed**.
- 16. Pending application(s), if any, shall also stand disposed off.

January 16, 2025					(Pankaj Jain)
Dpr					Judge
	Whether speaking/reasoned	:		Yes/No	
	Whether reportable	:		Yes/No	