



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
219

RSA-3468-2014(O&M)
Date of decision: 07.04.2026

Deepak

...Appellant(s)

Vs.

Dharambir & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Surender Lamba, Advocate
for the appellant.

Mr. Sumit Gupta, Advocate
for the respondents.

NIDHI GUPTA, J.

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned District Courts whereby suit filed by the appellant for possession by way of specific performance was partly decreed by the learned trial Court for recovery of earnest amount; and Civil Appeal there-against has been dismissed.

2. Brief facts of the case are that the plaintiff had filed the present suit for possession by way of specific performance of Agreement to Sell dated 25.09.2006. And in the alternative prayer was made for refund of earnest amount of ₹3 lakhs. It was pleaded in the plaint that defendant No.1 is owner in possession of 1/12th share in the agricultural land total measuring 102 kanal



122 marla. It was alleged that defendant No.1 had entered into Agreement to Sell dated 25.09.2006 for total sale consideration of Rs.7,50,000/-. It is further alleged that defendant No.1 received earnest amount of Rs.3 lakh at the time of execution of Agreement in the presence of witnesses and receipt was also issued by the defendant No.1. Target date for execution of Sale Deed was fixed for 20.03.2007. On 20.03.2007, the plaintiff had waited for defendant No.1 till 5 pm in the office of Sub-Registrar along with balance sale consideration of Rs.4,50,000/- but the defendant No.1 had failed to appear. On 27.03.2007, the plaintiff had approached the defendant No.1 who then disclosed that he had already executed Sale Deed with regard to suit property on 29.01.2007 in favour of defendants No.2 to 5. Accordingly, it was pleaded that the said Sale Deed was collusive and illegal. It was alleged that defendants No.2 to 5 had knowledge about the Agreement to Sell dated 25.09.2006 and all the facts appurtenant thereto. Therefore, defendants No.2 to 5 were not bona fide purchasers. It was stated that plaintiff is still ready and willing to perform the contract. Hence, present suit was filed on 18.04.2007.

3. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, learned Additional Civil Judge (Senior Division), Bahadurgarh had partly decreed the suit of the plaintiff vide judgment and decree dated 19.10.2012 as follows: -

“41. As a sequel of my findings on the forgoing issues, the suit of the plaintiff deserves to be partly decreed. The same is hereby



partly decreed, without any costs to the effect that the plaintiff is entitled to a recovery of Rs.3 lacs from the defendant no.1 Dharambir, alongwith a compound interest @ 12% per annum, from 25.9.2006 till the same is realized. The defendant no.1 Dharambir is directed to make the abovesaid payment within three months of this order, failing which the plaintiff shall be at liberty to recover the abovesaid amount by filing of execution. Decree- sheet be prepared accordingly. File be consigned to the record-room after due compliance.”

4. The Civil Appeal filed by the plaintiff was dismissed by the learned District Judge, Jhajjar vide judgment and decree dated 07.04.2014. Hence, present second appeal by the plaintiff.

5. It is inter alia submitted by learned counsel for the appellant that the learned District Courts were in patent error in denying specific performance to the appellant as appellant had duly succeeded in proving the execution of the Agreement to Sell; as also his readiness and willingness to perform the contract. It is contended that in this situation, specific performance could not have been denied to the appellant.

6. It is submitted that the Agreement to Sell in favour of the appellant was executed on 25.09.2006; whereas the alleged Sale Deed was executed in favour of the respondents on 29.01.2007. Thus, as the Agreement in favour of the appellant is prior in time, the same should be given precedence.



7. Ld. Counsel further submits that the respondents No.2 to 5 are not bona fide purchasers. The land of respondent No.2 adjoins the suit land. The respondent No.2, who is a police official, was aware of the Agreement to Sell (Ex.P2) between respondent No.1 and the appellant and accordingly, he cannot claim himself to be a bona fide purchaser. There is collusion between the respondents which is apparent from the fact that respondent No.1 despite service had failed to appear. It is submitted that the respondents in their deposition have admitted that the suit land is situated 2-3 acres away from the land of the respondents No.2 to 5. Moreover, respondents No.2 to 5 are the residents of the same village. As such, it is impossible that they did not know about the Agreement to Sell executed in favour of the appellant. They were also aware of the payment of earnest amount by the appellant. Yet they had got the impugned Sale Deed executed in their favour. Thus, they cannot be said to be bona fide purchasers.

8. It is accordingly prayed that *“this appeal may kindly be allowed, impugned judgment and decree of courts below may kindly be set aside/modified and the suit filed by the plaintiff-appellant may kindly be decreed for specific performance of agreement to sell Ex.P2 may kindly be passed in favour of the appellant with costs, to meet the ends of justice.”*

9. Per contra, learned counsel for the respondents vehemently opposes the submissions of the appellant and submits that the respondents No.2 to 5 do not reside in the same village as the appellant where the suit land



is situated. As such, they have no prior knowledge of the execution of the Agreement to Sell in favour of the appellant. The respondents No.2 to 5 had duly checked the Revenue Record prior to executing the Sale Deed dated 29.01.2007. As such, it cannot be said that the defendants No.2 to 5 are not bona fide purchasers of the suit property. It is accordingly prayed that the present appeal be dismissed.

10. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the record in detail. I find no merit in the submissions advanced on behalf of the appellant.

11. Perusal of record of the case shows that the defendant No.1 was proceeded against ex parte before the District Courts. Record further reveals that the appellant had duly succeeded in proving the execution of the Agreement to Sell from the evidence led by the plaintiff himself; and by examining the two attesting witnesses being PW4 Satpal and PW5 Sukhbir. The receipt of earnest money of Rs.3 lakh by the defendant No.1 from the plaintiff was also proved from the evidence of the aforesaid three witnesses. Further, the learned trial Court has held that simply because the attesting witnesses alleged that the Affidavits were got attested by the plaintiff, would not prove that witnesses were not present before the Oath Commissioner. Thus, both the District Courts have returned the finding that the Agreement in question stood duly proved.



12. As regards the defendants being bona fide purchasers, DW2 Rishi Ram/defendant No.3 has proved bona fide enquiry from the Sub-Registrar, Bahadurgarh and Revenue Authorities to show that prior to execution of the impugned Sale Deed due enquiry had been made by the defendants No.2 to 5. Even the relevant Revenue Record till the time of sale in favour of the defendants No.2 to 5 reflected defendant No.1 as owner in possession of suit land. Needless to say, there was no other source of knowledge for the defendants No.2 to 5 to know about the Agreement in question executed by defendant No.1 in favour of the plaintiff. This fact has been admitted by the plaintiff himself in his cross-examination as PW3 that the contesting defendants No.2 to 5 lacked knowledge about the Agreement in his favour. Thus, bona fide of the defendants has been admitted by the plaintiff himself.

13. Furthermore, even the plaintiff was unable to produce anything on record to show that defendants No.2 to 5 were aware of the Agreement to Sell between the plaintiff and the defendant No.1. Consequentially, it is my view that the suit has been rightly decreed in favour of the plaintiff for refund of earnest money of Rs.3 lakh. Moreover, plaintiff himself has made prayer for alternative relief of refund of earnest money.

14. The contention of the appellant that defendants No.2 to 5 resided in the same village and the suit land was situated 2-3 acres from the land of the defendants No.2 to 5 and therefore, it is not possible that they were not aware of the Agreement dated 25.09.2006 in favour of the appellant, is



without merit. In this regard, reference may be made to the findings and observations as recorded by the learned District Judge, Jhajjar in judgment dated 07.04.2014, which read as follows: -

"25. On the basis of the evidence on the record, I am of the considered view that the Appellant has proved on the record the agreement to sell (Ex. P2) executed by Respondent No.1 in his favour on 25.9.2006 and the fact that he (Appellant) had paid the earnest money of Rs. three lacs to respondent No.1. Admittedly, Respondent No.1 executed the sale-deed (Ex. D1) in favour of Respondents No.2 to 5 after the execution of the agreement to sell (Ex. P2) before the date fixed for execution of the sale- deed by Respondent No.1 in favour of the Appellant. As per Section 19 (b) of the Specific Performance Act, a person is entitled to specific performance against any person, who is claiming title under the vendor. However, in case, a person has purchased the property and has paid the money in good faith without any knowledge of the original contract, the specific performance cannot be enforced against him. Section 19(b) of the Specific Performance Act is as under:-

Section 19-Relief against parties and persons claiming under them by subsequent title- Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against -

Clause (b) - "any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who had paid his money in good faith and without notice of the original contract."



26. *There is nothing on the record that Respondents No.2 to 5 were aware of the agreement to sell between Respondent No.1 and the Appellant. Admittedly, the suit land is situated at Village Bhaproda. Appellant is a resident of Sampla and Respondents No.2 to 5 are residents of Village Gopalpur, Tehsil Kharkhoda, Distt. Sonapat. Appellant was not in possession of the suit land. In these circumstances, Respondents No.2 to 5 cannot be expected to know the agreement to sell (Ex. P2) between Respondent No.1 and the Appellant. I am of the considered view that the Trial Court has rightly granted the relief of refund of the earnest money and not granted the relief of specific performance. Accordingly, I hereby affirm the findings of the Trial Court on issue No.1."*

15. Reference may also be made to judgment of the Hon'ble Supreme Court in **Ram Niwas (dead) through Lrs. V. Smt. Bano, (SC) : Law Finder Doc ID # 18564**, wherein it is held that: -

"A. Specific Relief Act, 1963, Section 19(b) - Transfer of Property Act, Section 3, Explanation II - Subsequent purchaser - Bonafide purchaser without notice - Presumption of notice - First purchaser acquires a legal right and first sale will prevail - But where one is a legal right and the other is an equitable right "a bona fide purchaser for valuable consideration; who obtains a legal estate at the time of his purchase without notice of a prior equitable right is entitled to priority in equity as well as at law" - However, a statutory presumption of notice arises against any person who acquires any immovable property or any share or interest therein of the title of a person who is for the time being in actual possession thereof.



B. Transfer of Property Act, Section 3, Explanation II - 'Notice' - The word 'Notice' should be used instead of "knowledge" in the context of Section 19(b) of The Transfer of Property Act - Word "Notice" is of wider import than the work "knowledge" - A person may not have actual knowledge of a fact but he may have notice of it.

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4. The said provision is based on the principle of English law which fixes priority between a legal right and an equitable right. If 'A' purchases any property from 'B' and thereafter 'B' sells the same to 'C', the sale in favour of 'A', being prior in time, prevails over the sale in favour of 'C' as both 'A' and 'C' acquired legal rights. But where one is a legal right and the other is an equitable right "a bona fide purchaser for valuable consideration who obtains a legal estate at the time of his purchase without notice of a prior equitable right is entitled to priority in equity as well as at law". [Snell's Equity - Thirtieth Edition - p. 48]. This principle is embodied in Section 19(b) of the Specific Relief Act.

5. It may be noted here that 'notice' may be (i) actual, (ii) constructive, or (iii) imputed.

6. Section 3 of the Transfer of Property Act defines, inter alia, "a person is said to have notice" of a fact when he actually knows that fact, or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it. And Explanation II appended to this definition clause says: "Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof."



7. Thus, it is seen that a statutory presumption of 'notice' arises against any person who acquires any immovable property or any share or interest therein of the title, if any, of the person who is for the time being in actual possession thereof.

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17. Both the learned Single Judge as well as the learned Judges of the Division Bench of the High Court dealt with the question whether the purchasers had actual knowledge of Ext.1, the earlier contract, and on evidence found that the purchasers did not have any knowledge of it. But they failed to notice the provisions of Explanation II to Section 3 of the Transfer of Property Act which is germane on the point of notice. Indeed, issue No. 10 was not properly framed. The word 'notice' should have been used in issue No. 10 instead of 'knowledge' because Section 19(b) uses the word 'notice'. From the definition of the expression, "a person is said to have notice" in Section 3 of the Transfer of Property Act, it is plain that the word 'notice' is of wider import than the word 'knowledge'. A person may not have actual knowledge of a fact but he may have notice of it having regard to the aforementioned definition and Explanation II thereto. If the purchasers have relied upon the assertion of the vendor or on their own knowledge and abstained from making enquiry into the real nature of the possession of the tenant, they cannot escape from the consequences of the deemed notice under Explanation II to Section 3 of the Transfer of Property Act. On this point, in the light of the above discussion, we hold that the purchasers will be deemed to have notice of Ext.1, should it be found to be true and valid."



16. Thus, from the above-noted factual and legal position, it is established that the defendants No.2 to 5 did not have prior notice or knowledge of the Agreement to Sell dated 25.09.2006. Resultantly, they are bona fide purchasers of the suit property.

17. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings.

18. In view of the above, present Regular Second Appeal stands **dismissed**.

19. Pending application(s) if any also stand(s) disposed of.

07.04.2026
Sunena

(Nidhi Gupta)
Judge

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