



RSA-1345-1990

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

(146)

**RSA-1345-1990
Reserved on 03.07.2025
Pronounced on 11.07.2025**

Abdul Gani**... Appellant****Versus****Pooran and another****... Respondents****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Rajinder Goel, Advocate,
Mr. Purusharth Dhull, Advocate and
Mr. Tushar, Advocate
for the appellant.

Respondent No.1 was ordered to be proceeded against ex-parte by
this Court vide order dated 20.08.2024.

Mr. Ghulam Nabi Malik, Advocate
for the respondent No.2.

SUVIR SEHGAL, J.

1. Aggrieved of the concurrent findings recorded by the two Courts, appellant-plaintiff is in second appeal before this Court.
2. Plaintiff filed a suit for specific performance of agreement to sell dated 02.01.1984, Ex. P-1, entered into with defendant No.1 for purchase of land measuring 8 kanals situated in village Hirgali, Tehsil Ferozepur Jhirka, District Gurugram. It has been pleaded that Rs.1000/- has been paid as advance and the sale deed for the suit land was to be executed on or before 31.12.1984. The total consideration for the sale was Rs.9000/- and the balance amount was to be paid at the time of the registration. Plaintiff has averred that he was ready and

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willing to perform his part of the agreement. However, defendant No.1 transferred the suit land by way of registered sale deed dated 28.05.1984, Ex.D-1, in favour of defendant No.2 for a consideration of Rs.15,000/-. It has been alleged that the sale deed, Ex.D-1, has been executed by defendant No.1, under influence of Abdul Hai, who is the son of defendant No.2. Despite being served, defendant No.1 did not contest the suit and was proceeded against ex-parte. In his written statement, defendant No.2 has taken a stand that she did not have any notice or knowledge of the alleged agreement, Ex.P-1, executed between the plaintiff and defendant No.1. Defendant No.2 claimed to be a bonafide purchaser for consideration and without notice. Plaintiff filed replication re-asserting the averments of the plaint. On the basis of the pleadings of the parties, Trial Court framed issues. After the parties led evidence and were heard, by judgment dated 03.11.1989, Trial Court dismissed the suit qua defendant No.2. A decree was passed against defendant No.1 for recovery of Rs,1000/- and damages of Rs.4000/- for alienating the suit land to defendant No.2. Plaintiff remained unsuccessful in the first appeal, which was dismissed by the learned Additional District Judge, Gurugram vide judgment dated 14.03.1990 resulting in the institution of the present appeal.

3. Mr. Rajinder Goel, counsel for the appellant has argued that agreement to sell dated 02.01.1984, Ex.P-1, in favour of the plaintiff stands proved and it was to the knowledge of defendant No.2, who cannot claim to be a bonafide purchaser without notice. By making a reference to the cross-examination of defendant No.2, it has been argued that she did not make any enquiries from the vendor/defendant No.1 as to whether he had entered into any previous



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agreement. Reference has also been made by him to the deposition of Noor Mohd., PW-5, one of the attesting witnesses of the sale deed, Ex.D-1, to submit that he has specifically informed the defendant No.2 of the previous agreement. He has placed reliance upon:-

(i) Dr. Govinddas and another Versus Shrimati Shantibai and others, 1972 PLR 227;

(ii) Smt. Krishna Devi and others Versus Shiv Dev Singh and others, 1984 PLR 301;

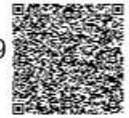
(iii) Balwant and others Versus Labh Chand (deceased) and others, 1988 PLJ 224; and

(iv) Ravinder Singh Versus Ranjit Singh and another, 2007 (19) R.C.R. (Civil) 74.

4. Opposing him, counsel for respondent No.2 has urged that defendant No.2 had acted in a good faith and there is no material on the record to show that she had any notice of the agreement, Ex.P-1.

5. I have heard counsel for the parties and considered their respective submission, besides examining the requisitioned record.

6. In order to establish of the agreement to sell, Ex.P-1, plaintiff stepped into the witness box as PW-4 as well as examined the scribe, Jagdish Parshad Gupta, PW-1 and the two witnesses, Abdul Karim and Sampat Khan, PW-2 and PW-3, respectively. Defendant No.1 was the best person to refute the evidence led by the plaintiff, however, he was proceeded against ex-parte and defendant No.2 could not produce any evidence to the contrary. Therefore, the agreement to sell, Ex.P-1, in favour of the plaintiff, payment of an earnest

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money of Rs.1000/- and readiness and willingness of the plaintiff to perform his part of the agreement, stands established.

7. Defendant No.2, Attri, has examined herself as DW-1 to support her case that she is a bonafide purchaser and without notice. In her testimony, besides deposing regarding of the sale deed, Ex.D-1, she has stated that her son was in possession of the suit land and used to pay 1/2 batai to defendant No.1. She has categorically stated that the agreement to sell in favour of the plaintiff was never to her knowledge. Mere fact that defendant No.2 did not make any specific enquiry from the vendor of defendant No.1 regarding any previous agreement is immaterial because it has been duly proved on the record that the possession of the land was not with him. The reliance upon the testimony of Noor Mohd., PW-5, would also not help the plaintiff. In his cross-examination, Noor Mohd., has stated that the agreement to sell, Ex.P-1, was never executed in his presence, nor was defendant No.2 informed about the said agreement in his presence. He has no knowledge about the person, who is alleged to have informed defendant No.2 about the agreement, Ex.P-1. He has deposed on the basis of heresy that defendant No.2 was aware of agreement in favour of the plaintiff. Plaintiff's native village was at a distance of two miles from that of defendant No.2, who cannot be presumed to be in the know about prior agreement in the absence of any direct evidence. The onus to prove that defendant No.2 is the bonafide purchaser without notice has been discharged by defendant No.2 and the plaintiff has not been able to lead an unimpeachable evidence to the contrary. The judgments relied upon by the counsel for the appellant are not applicable to the facts of the present case. There is no

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illegality or infirmity in the findings arrived at by the Court below, which are affirmed.

8. Appeal is bereft of merit and is dismissed with no order as to cost.

9. As the main appeal has been decided, pending application(s), if any, is/are disposed of.

11.07.2025
Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No