



Sr.No.101

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

**RSA No.264 of 1995 (O&M)
Reserved on : 22.11.2024
Pronounced on : 05.02.2025**

Malkiat Ram and others

...Appellants

Versus

Lal Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. M.L. Sarin, Sr. Advocate
with Ms. Hemani Sarin, Advocate
for the Appellants.

Mr. G.S. Jaiswal, Advocate
for Respondents No.1 & 2.

PANKAJ JAIN, J.

Appellants/Defendants No.2 to 4 claim to be *bonafide* purchasers of the land as detailed out in plant (*hereinafter referred to as the 'suit land'*). For convenience, the parties are being referred to by their original position in the suit i.e. the appellants as defendant Nos.2 to 4 and respondent Nos.1 & 2 as plaintiffs.

2. Plaintiffs filed suit for specific performance of agreement to sell with respect to suit land admeasuring 16 kanals 15 marlas. As per plaintiffs, Sada Ram – defendant No.1 executed Agreement to Sell dated 23.11.1983 in



their favour. The total sale consideration agreed between the parties was Rs.40,000/-. Rs.8000/- were paid on the date of execution of agreement to sell. Sale deed was to be executed on payment of balance sale consideration on or before 23.11.1987. Land was under mortgage. Defendant No.1 agreed to get the same redeemed prior to execution of agreement to sell. Defendant No.1 could not get the land redeemed as he had no means to pay the mortgage money. He expressed his intention to extend the time. Defendant No.1 on 23.11.1987 executed another agreement to sell with respect to same land for the same consideration of Rs.40,000/-. Further sum of Rs.30,000/- was paid to him thereby paying total sale consideration of Rs.38,000/-. The same was acknowledged by him. Defendant No.1 agreed to execute the sale deed on or before 30.06.1988. Plaintiffs were put in possession of the suit land. Terms and conditions of Agreement to Sell dated 23.11.1987 remained the same as incorporated in the Agreement to Sell dated 23.11.1983. Plaintiffs claim that they always remained ready and willing to perform his part of contract, but defendant No.1 in breach of the terms of agreement failed to execute the sale deed.

2.1. Plaintiffs served defendant No.1 with registered notice dated 07.06.1988 to come present before the Sub-Registrar, Garhshankar on 30.06.1988. Though plaintiffs remained present till 5 PM, but defendant No.1 did not come present. By way of present suit, the plaintiffs seeks decree of specific performance and in the alternate prays for recovery of Rs.40,000/-.

2.2. Suit was contested by defendant No.1-the Vendor. Execution of agreement to sell and receipt of earnest money to the tune of Rs.38,000/- was



admitted. It was claimed by defendant No.1 that he approached plaintiffs in the beginning of April, 1988 to get the sale deed executed on payment of balance sale consideration. They were not in position to pay the balance sale consideration as well as stamp charges. Plaintiffs expressed their inability to get the sale deed executed. He being in need of money sold suit land to defendant Nos.2 to 4 after disclosing them about the previous agreement to sell executed by him in favour of plaintiffs. Absence of Defendant No.1 before Sub-Registrar on the agreed date is admitted.

2.3. Defendant Nos.2 to 4 filed separate written statement alleging agreement to sell propounded by plaintiffs to be forged and fictitious document as a result of collusion between plaintiffs and defendant No.1. They claimed themselves to be *bonafide* purchasers for consideration. It was claimed that defendant Nos.2 to 4 had no notice of agreement to sell propounded by plaintiffs and have purchased land in question for a valuable consideration of Rs.42,000/-.

2.4. On the basis of pleadings, the Court of first instance framed following issues:-

1. *Whether defendant No.1 entered into an agreement to sell with the plaintiffs and executed agreement to sell dated 23-11-1983 as alleged ? OPP*
2. *Whether the defendant received Rs.8000/- from the plaintiffs as earnest money on 23-11-1983 ? OPP*
3. *Whether the defendant executed agreement deed dated 23-11-1987 and received Rs.30,000/- from the plaintiff as alleged? OPP*
4. *Whether the plaintiffs have already been ready and willing to perform their part of the contract? OPP*



5. *Whether the plaintiffs suffered damages, if so to what extent and to what effect? OPP*
6. *Whether the suit is within time? OPP*
7. *Whether the suit is correctly valued for the purposes of court fee and jurisdiction? OPP*
8. *Whether the suit is not maintainable in the present form? OPD*
9. *Whether the suit is collusive and at the instance of defendant No.1? OPD-2 to 4*
10. *Whether defendant No.1 sold 16 kanals 15 marlas of land in favour of defendants No.2 to 4 through sale deed dated 5-4-1988 for Rs.42000/-? OPD*
11. *Whether the defendants No. 2 to 4 are bonafide purchasers for valuable consideration without notice? OPD*
12. *Whether the plaintiffs are estopped from filing the suit by their acts, conduct and admissions? OPD*
13. *Relief.*

2.5. Trial court came to the conclusion that the execution of agreements to sell Ex.P1 and Ex.P2 i.e. Agreement to Sell dated 23.11.1983 and 23.11.1987, respectively, stand fully proved and decided issue Nos.1 to 3 in favour of plaintiffs. On the basis of admission made by defendant No.1, issue Nos.4 & 6 were also answered in favour of plaintiffs along with issue Nos.7, 8 & 9. While deciding issue Nos.10 & 11, the Court of first instance came to the conclusion that even though defendant Nos.1 to 4 are related to each other but the relation is remote one. Sale deed in favour of defendants No.2 to 4 stands fully proved. Plea taken by plaintiffs being in possession of suit land has been found to be false in view of copy of Khasra Gridawari Ex.D2. Resultantly, the Trial Court held defendant Nos.2 to 4 to be *bonafide*



purchasers of the suit land for valuable consideration without notice and decreed the suit filed by plaintiffs only *qua* alternate relief of recovery of Rs.38,000/- and denied the plaintiffs main relief of specific performance.

2.6. Plaintiffs preferred appeal. Lower Appellate Court while reversing findings on issue Nos.10 & 11 concluded that defendant No.1 and defendant Nos.2 to 4 being related, there was strong presumption that they had knowledge of the earlier agreement to sell in favour of plaintiffs. From perusal of agreement dated 23.12.1987 Ex.P9, it is evident that the same witness who attested agreement to sell Ex.P9 witnessed the sale deed propounded by defendant Nos.2 to 4. There was no evidence to prove payment of sale consideration before the Sub-Registrar. In view of the aforesaid circumstances, the Lower Appellate Court after reappreciating the evidence, came to the conclusion that findings given on issue Nos.10 & 11 need to be reversed and held plaintiffs entitled for decree of specific performance. The appeal stands allowed.

Hence, defendant Nos.2 to 4 are before this Court in second appeal.

3. Ld. Senior Counsel representing appellants/defendant Nos.2 to 4 has assailed the findings recorded by Lower Appellate Court and submits that Lower Appellate Court erred in reversing validly exercised discretion at the hands of Court of first instance, without there being any cogent reason. He submits that findings rendered by Lower Appellate Court of plaintiffs being in possession over the suit land is based upon document Ex.P9. The same was objected to at the time the same was tendered in evidence. The objection was



recorded but never decided. He further submits that Sarpanch appeared as DW2 and denied the contents thereof. Thus, finding recorded by the Lower Appellate Court with respect to plaintiffs being in possession of the suit land is perverse and same needs to be reversed. The well- reasoned findings given by Trial Court need to be maintained.

3.1. Learned Senior Counsel has further submitted that claim of defendant No.1 that he disclosed fact of execution of earlier agreement to sell in favour of plaintiffs to defendant Nos.2 to 4 is not sufficient to hold that defendant Nos.2 to 4 are not *bonafide* purchasers. In order to prove the same, plaintiffs are required to lead positive evidence. He avers that findings recorded by Lower Appellate Court with respect to non-payment of sale consideration is against the contents of a registered document. In the registered deed, there was a specific mention that sale consideration of Rs.42,000/- has been paid by defendant Nos.2 to 4 to defendant No.1. There was never any challenge to the recitals of sale deed. Presumption attached to the registered document having not been rebutted, there was no reason for the Lower Appellate Court to reverse a well-reasoned judgment passed by Trial Court. In order to hammer-forth his contention, he has heavily relied upon ratio of law laid down by this Court in *Dilbagh Singh etc. vs. Smt. Jasbir Kaur, passed in RSA No.1920 of 1992, decided on 07.11.2024*. Further reliance is being laid upon *Nand Kishore vs. Rameshwar Dayal and another, 1989 PLJ 258; Jamila Begum (Dead) Through LRs. vs. Shami Mohd. (Dead) Through LRs. and another, 2019(2) SCC 727; Abnash Chander and another vs. Abhimanyu Ansal and another, 1995 HRR 36; Narayan*



Bhagwantrao Gosavi Balajiwale vs. Gopal Vinayak Gosavi and others, AIR 1960 Supreme Court 100; A.C. Arulappan vs. Smt. Ahalya Naik, 2001 SC 2783; Rajender Parshad vs. Shiv Tej Singh, 2018(4) PLR 269; Dr. Govinddas and another vs. Srimati Shantibai and others, 1972 SC 227 and Harbakhsh Singh Gill and others vs. Sh. Ram Rattan and another, 1987(1) PLR 185.

4. *Per contra*, counsel for respondent Nos.1 & 2/plaintiffs submits that there is no challenge to the findings recorded on issue No.9 and issue Nos.1 to 3. In the absence of any challenge to findings on issue No.9, the findings with respect to there being no collusion between the plaintiffs and defendant No.1 stands accepted. There is a close relationship between defendant No.1 and defendant Nos.2 to 4. Pedigree table Ex.P10 has come on record. The same proves that defendant No.1 and father of defendant Nos.3 & 4 are brothers from a common ancestor namely Achhru. Achhru had three sons namely Ganda, Chandu and Saun. Sada Ram – defendant No.1 is grandson of Ganda. Defendants No.3 & 4 are son and daughter of Babu Ram, who is grandson of Saun. Thus, defendant No.1 and defendant Nos.3 & 4 having common ancestors are closely related and are collaterals. The land in question is surrounded by land of Babu Ram, father of defendant Nos.3 & 4. Thus, the Lower Appellate Court has rightly held that defendants No.2 to 4 who claimed to be the *bonafide* purchaser, were in knowledge and had notice to agreement to sell executed by vendor in favour of plaintiffs. He further submits that there was a dispute with respect to land which was settled vide document Ex.P9. The same was settled by Panchayati compromise Ex.P9. It



stands fully proved and the same has been rightly relied upon by the Lower Appellate Court.

4.1. He further submits that no fault can be found with the findings recorded by Lower Appellate Court with respect to non-payment of sale consideration. As per the recital in the Sale Deed Ex.D1, amount of Rs.22,000/- was paid at home. Rs.20,000/- was to be received before Sub-Registrar. However, as per statutory endorsement made on Ex.D1/A, the entire sale consideration of Rs.42,000/- was paid before the Sub-Registrar. There being serious contradiction between the statutory endorsement and recital of the sale deed, onus laid heavily upon appellants to prove the payment of sale consideration. They having failed to lead any evidence, the Lower Appellate Court has rightly returned the findings with respect to sale in favour of appellants being without consideration and not *bonafide*. To hammer-forth his contention, he has relied upon *Sampatbai vs. Ramesh Chandra Veerbhan and others, 1994 (1) CivCC 411; P. Ramasubamma vs. V. Vijayalakshmi and others, (2022) AIR (SC) Civil 1427; Dr. Govinddas and another vs. Smt. Shantibai and others, AIR 1972 SC 1520; Prakash Chandra vs. Angad Lal and others, AIR 1979 SC 1241; Ajit Prashad Jain vs. N.K. Widhani and others, AIR 1990 Del. 42 and Vinod Kumar vs. Negi Ram, 2017(3) ILR (HP) 629.*

5. Having heard the rival contentions of learned Senior Counsel as well as counsel for the parties, in the considered opinion of this Court, the controversy involved in the present appeal is quite narrow. Plaintiffs seek specific performance of Agreement to Sell prior in time to the Sale Deed



propounded by appellants/defendants No.2 to 4. The execution of Agreement to Sell in favour of plaintiffs is not denied. The issue is ‘whether plaintiffs are entitled to the relief of specific performance, de hors the subsequent Sale Deed executed by vendors in favour of appellants/defendants No.2 to 4 or it is the appellants/defendants No.2 to 4, the subsequent vendees, who are entitled to protect their Sale Deed.

6. Right of party seeking decree of specific performance *vis-à-vis* rights of subsequent purchaser is governed by Section 19 of the Specific Relief Act, 1963 (*hereinafter referred to as ‘1963 Act’*), which reads as under:-

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—

(a) either party thereto;

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

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.



(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

7. In view of the aforesaid provision, a subsequent purchaser in order to escape from the decree of specific performance of a contract needs to prove that he is a transferee for value paid in good faith and without notice of the original contract. Section 27 of the Specific Relief Act, 1877, which is a provision in *pari materia* with Section 19 of 1963 Act, was considered by Privy Council in ***Mohd. Aslam Khan vs. Feroze Shah, AIR 1932 Privy Council 228***, observing as under:-

“Where a transferee has knowledge of such facts which would put him on inquiry which if prosecuted would have disclosed a previous agreement, such transferee is not a transferee without notice of the original contract within the meaning of the exception in Section 27(b).”

8. Almost the same ratio was reiterated in ***Bhup Narain Singh vs. Gokul Chand Mahton, AIR 1934 Privy Council 68*** observing as under:-

“Section 27 lays down a general rule that the original contract may be specifically enforced against a subsequent transferee, but allows an exception to that general rule, not to the transferor, but to the transferee, and, in their Lordships' opinion, it is clearly for the transferee to establish the circumstances which will allow



him to retain the benefit of a transfer which, prima facie, he had no right to get.”

9. The inquiry referred to by Privy Council in the case of **Mohd. Aslam Khan’s case (supra)** is the one referred to under Section 3 of the Transfer of Property Act, 1882, which reads as under:-

“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.

Explanation I.—Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under subsection(2) of Section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:”

10. Supreme Court in the case of **Govinddas (Dr) vs. Shantibai, (1973) 3 SCC 418** observed as under:-

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14. It will be noticed that the evidence is contradictory and we have to decide whose version is more acceptable. The learned counsel for the appellants contended that the onus of proof was very light on the appellants and they had discharged it by entering the witness-box and stating that they had no knowledge. We are unable to agree with him that in the circumstances of this



(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract; under a lease, with an agreement in his pocket to become the purchaser, those circumstances altogether give him an equity repelling the claim of a subsequent purchaser who made no inquiry as to the nature of his possession.”

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17. Relying on the decision of this Court a Division Bench of the High Court of Madras in Veeramalai Vanniar v. Thadikara Vanniar [AIR 1968 Mad 383 : (1968) 1 MLJ 437] has held that it is also the duty of the subsequent purchaser to inquire from the persons in possession as to the precise character in which they were in possession at the time when subsequent sale transaction was entered into. If there be a tenant in possession of land a purchaser is bound by all the equities which the tenant could enforce against the vendor and such equity extends not only to the interest connected with the tenancy but also to interests under the actual agreement.

18. In Govinddas (Dr) v. Shantibai [(1973) 3 SCC 418] this Court in para 14 has held:

“14. It will be noticed that the evidence is contradictory and we have to decide whose version is more acceptable. The learned counsel for the appellants contended that the onus of proof was very light on the appellants and they had discharged it by entering the witness box and stating that they had no knowledge. We are unable to agree with him that in the circumstances of this case the onus was light on the appellants. The circumstances that tell heavily against the version of the appellants are these. First, all the parties are residents or have shops in the same vicinity and in places like this it is not probable that the appellants would not come to know of the execution of the agreement (Souda-Chitthi) of the plaintiff. Secondly, the haste with which the sale deed in favour of the appellants was executed was unusual. It is more usual for an agreement



to be executed in such cases rather than arrive at an oral agreement on one day and have the sale deed executed the next day and registered the following day. For some reason the appellants were in a hurry to get the deed registered. What was the reason? In view of all the circumstances we are inclined to accept the evidence of Hem Raj Chouhan, and corroborated by Hayat, that Goverdhandas knew of the execution of the agreement with the plaintiff on March 1, 1960.”

As can be seen from the paragraph, extracted above, that in case of contradictory evidence the circumstances have to be kept in view in deciding whose version is more acceptable. One of the circumstances that was held against the subsequent purchasers was that the parties were residents or had shops in the same vicinity and it was not probable that the subsequent purchasers would not have come to know of the execution of the agreement. In the case on hand the trial court as well as the High Court have given reasons based on evidence and have indicated several circumstances for not accepting the version of Defendants 2 to 4 that they had no knowledge of the prior agreement Ext. A-3; one of the circumstances being that the parties are neighbours in the place of business as well as in the residential locality. We have also already referred to that briefly.

19. In view of what is stated above, it is clear that Defendants 2 to 5 were not bona fide purchasers for value without prior notice of the original contract and that they were required to make inquiry as to the nature of possession or title or further interest, if any, of the plaintiff over the suit property at the time when they entered into sale transaction notwithstanding they were already aware that the plaintiff was in possession of the property as the tenant. What is material is the inquiry at the time when the subsequent sale transaction was entered into.

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12. The aforesaid view was again followed by Supreme Court in ***Har Narain vs. Mam Chand, (2010) 13 SCC 128*** observing as under:-

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20. So far as the issue of notice of first sale to Respondents 2 to 6 is concerned, it has to be examined bearing in mind that the sale deed in favour of Respondents 2 to 6 clearly disclosed that the suit land had been mortgaged to the appellant and it was in his possession since 1970. In *R.K. Mohammed Ubaidullah v. Hajee C. Abdul Wahab [(2000) 6 SCC 402 : AIR 2001 SC 1658]* this Court considered a similar case wherein the question had arisen as to whether the vendees of subsequent sale were bona fide purchasers of the suit property in good faith for value without notice of original contract and whether they were not required to make any inquiry as to the equitable or further interest of the other party at the time of execution of sale in their favour. In view of the fact that they had been aware that the land was in possession of the first purchaser, the Court took note of the definition of “notice” as provided in Section 3 of the 1882 Act and particularly Explanation II thereof for deciding the case. The said Explanation reads:

“Explanation II.—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.”

This Court came to the conclusion that in view of Section 19(b) of the 1963 Act and definition of “notice” contained under Section 3 of the 1882 Act, it could not be held that the subsequent purchasers were bona fide purchasers in good faith for value without notice of the original contract and they were required to make inquiry as to the nature of the possession or title or further interest, if any, of the other party over the suit property at the



time when they entered into sale transaction, notwithstanding that they were already aware that the other party was in possession of the suit property as the tenant. Thus, what is material is the inquiry at the time when subsequent sale transaction was entered into.

21. The instant case is squarely covered by the aforesaid judgment, so far as this issue is concerned. The subsequent purchaser has to be aware before he purchases the suit property. Thus, we are of the considered opinion that Respondents 2 to 6 could not be held to be bona fide purchasers for value paid in good faith without notice of the original contract and the sale in their favour was subject to the doctrine of lis pendens. The legal maxim, pendente lite, nihil innovetur provides that as to the rights of the parties to the litigation, “the conveyance is treated as if it never had any existence; and it does not vary them”.

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13. The same has been reiterated in **Maharaj Singh vs. Karan Singh, (2024) 8 SCC 83** observing as under:-

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24. In view of clause (b) of Section 19, the defendants who are claiming under the sale deeds executed after the execution of the suit agreement can be subjected to a decree of specific performance as the suit agreement can be enforced specifically against such defendants unless they are bona fide purchasers without the notice of the original contract. When, in a given case, the defendants, who are subsequent purchasers, fail to prove that they entered into the sale deed in good faith and without notice of the suit agreement, in view of Section 19(b), a decree for specific performance can be passed against such defendants. Therefore, in such a case where Section 19(b) is applicable, under the decree of specific performance, the subsequent



purchasers can be directed to execute the sale deed along with the original vendor. There is no necessity to pray for the cancellation of the subsequent sale deeds.

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14. In terms of Section 19 *ibid*, it is the transferee who needs to prove that he is a transferee for value in good faith and without notice of original contract. It is he, who raises the plea. In terms of Sections 101 and 102 of the Evidence Act, 1872, onus to prove always lies upon a party who alleges and avers. Thus, the burden was always upon the vendees to prove the same. Reference can be made to ***Bhuru @ Bhura Ram vs. Sube Singh and others, (2008) 3 RCR (Civil) 430*** wherein this Court observed as under:-

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10. The findings recorded by the First Appellate Court that once the subsequent purchaser asserts that they had no notice of such agreement then it was for the plaintiff to produce evidence is erroneous and unsustainable because mere denial by the transferee that he had no notice of the previous contract for sale will not discharge the onus that is casted on them. The onus is always on the transferee to prove that they had no notice of prior agreement and that can only be discharged by leading cogent evidence. In this regard, the law laid down by the Division Bench in the case of Gurmukh Singh's case (supra) is fully applicable to the facts of the case because when appearing as DW3, Sube Singh himself has admitted that before the sale, he had not enquired from defendant No. 1 in respect of any previous agreement with anybody by him. Therefore, he has not discharged the burden which was rested upon him in respect of the notice. The other finding of the First Appellate Court that the time gap between the two transactions was too short that there



was no chance to vendees for gaining knowledge of the earlier agreement is concerned, that too is erroneous, in view of the decision of the Apex Court in Dr. Gobind Dass case (supra). In that case, it was held that the unusual haste in which the contract was executed and got registered also shows that the parties had notice of the previous agreement. Moreover, it is an admitted fact that all the parties are from the same village. Therefore, in view of the law laid down by this court in Balwan Singh's case (supra) and Nirmal Singh's case (supra), where the parties belong to the small place then it is probable that they must have come to know about the prior agreement to sell of the disputed land. Thus, the finding recorded by the First Appellate Court in respect of Defendants No. 2 and 3, being bona fide purchaser is ill founded, unsustainable and is thus reversed. Once, it is held that defendants No. 2 and 3 are not bona fide purchaser, the judgment decree of the lower appellate court is set aside and that of the trial court is restored. The suit of the plaintiff is, thus, decreed as prayed for, with costs through out.”

15. A Division Bench of this Court while discussing ***Bhup Narain Singh's case (supra)*** in ***Gurmukh Singh and others vs. Sohan Singh and others, AIR 1963 P&H 470*** observed as under:-

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6. Therefore no benefit can be derived from this decision. Each case will have to be examined on its own facts to find out whether the onus which rests on the defendant in view of section 27 of the Specific Relief Act is discharged or not.

7. In Dhadi Dalai's case [A.I.R. 1961 Oriasa 129.] , the aforesaid observations of Raj Kishore Prasad J. in Ram Chander Singh's case [A.I.R. 1957 Pat. 224.] were relied upon by J.K. Misra, J.



and it was held that the onus which rested on the subsequent purchaser was discharged. In the concluding portion of this decision, it is observed:—

“In the present case, defendant No. 1 pledged his own oath that he had no notice of the earlier agreement for sale, and no apparent justification has been indicated to disbelieve the said denial. If by any positive act he was to prove his honesty of intention, he has established that he made enquiries from the registration office about any existing encumbrance, and he further got the suit land identified by an amin prior to the purchase. So the contention that the purchaser has not been able to discharge the onus, has to be rejected.”

It will thus be obvious that in this case there was sufficient evidence on the basis of which it was held that the onus had been discharged.

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16. Reliance by Mr. Sarin on the ratio of law laid down in ***Dilbagh Singh’s*** and ***Nand Kishore’s case (supra)*** is misplaced. There is no denial to the fact that positive evidence needs to be led by plaintiffs. However, since it is subsequent purchaser who seeks protection under Section 19 of 1963 Act and claims to be transferee without notice, heavy burden lies upon his shoulder to prove the same. Law expects a purchaser to be prudent. Thus, subsequent purchaser has to plead and prove that he made inquiry before entering into transaction. So has been held in ***Nand Kishore’s case (supra)*** relied upon by Mr. Sarin. Even if Ex.P9 is ignored for the sake of argument, appellants fail on Section 19 of 1963 Act. One of the appellants namely Malkiat Ram appeared as DW3. In whole of his testimony, he has not uttered even a single word with respect to any inquiry conducted by any of the vendees before entering into sale transaction. There is no evidence with



respect to there being any Agreement to Sell between the parties preceding the Sale Deed. Parties straightway entered into a registered Sale Deed. Haste shown in execution of sale deed without there being any prior agreement is another feature that cannot be ignored. It has also come on record that subsequent vendees and vendor are related to each other. They were born from the same family tree. The arguments raised by Mr. Sarin with respect to duty casted upon the plaintiffs to prove notice to the subsequent vendee is misplaced and cannot be accepted. It was thus incumbent upon defendants to first claim inquiry. There is not even a whisper in the testimony of DW3 regarding any inquiry conducted by vendees.

17. Lower Appellate Court disentitled the appellants holding that the recital of payment at the time of registration, when read in light of statutory endorsement made by registering authority, clearly proves that vendees neither made payment of Rs.22,000/- at the time of registration nor is there any proof of payment of Rs.42,000/- at the time of registration. Lower Appellate Court further came to the conclusion that from document Ex.P9 possession of the plaintiffs stands proved. Signatory to document Ex.P9 are also attesting witnesses to Sale Deed Ex.D1. Vendees/defendants are relatives of the vendor and thus this all proves that they were in knowledge of the Agreement to Sell in favour of plaintiffs.

18. Mr. Sarin relies upon ratio of law laid down by coordinate Bench in the case of *Dilbagh Singh (supra)* to submit that registered sale deed having presumption of truth attached to it needs to be believed till the presumption is rebutted by plaintiffs by leading positive evidence. There is



no dispute with respect to proposition of law laid down by coordinate Bench in *Dilbagh Singh's case (supra)* as referred to by Mr. Sarin. However, in *Dilbagh Singh's case (supra)*, the coordinate Bench came to the conclusion that recitals in the registered document could not be remotely rebutted and thus sale deed was wrongly set aside by the Appellate Court. In the present case, the evidence is to the contrary. The evidence adduced by appellants/defendants has fallen flat owing to its own contradictions. The recital in the sale deed with respect to payment of consideration reads as under:-

“I have received Rs.20,000/- earnest money at my residence. Rest of Rs.22,000/- will be received before the Sub-Registrar.”

The statutory endorsement before the Sub-Registrar reads as under:-

“Vendor received an amount of Rs.42,000/- before me.”

19. The comparative reading of the recitals made in the sale deed and the statutory endorsement made by the Sub-Registrar shows that both are at variance. They are not in sync. Under Section 58 of the Registration Act, the statutory endorsement made by the Sub-Registrar enjoys statutory presumption. The same stands rebutted by the recital made in the sale deed. There is no evidence with respect to any payment made before the Sub-Registrar apart from the endorsement which stands falsified by the recital of the sale deed. There is no other evidence with respect to payment made before the Sub-Registrar. Whole of the payment of Rs.42,000/- is said to have been made in cash. At no point of time, any effort was made to show the source of



cash money possessed by vendees. In view thereof, this Court finds that the Lower Appellate Court rightly held that the appellants failed to prove that they are transferees for value having paid money in good faith.

20. The ratio laid down in *Jamila Begum's case (supra)* is not applicable to the present appeal. In *Jamila Begum's case (supra)*, there was no question of subsequent purchaser without notice. Rather it was a case seeking cancellation of sale deed under Section 31 of the Specific Relief Act. Similarly in *Abnash Chander's case (supra)*, there was no contradiction between recitals of sale deed and statutory endorsement by Sub-Registrar.

21. There cannot be any denial to the fact that the relief of specific performance is a discretionary relief. However, it being so, does not exclude the jurisdiction of the Appellate Court in reappreciating the evidence and reversing findings of the Trial Court in appropriate case.

22. In view of above, this Court does not find that the appellants can protect their Sale Deed having failed to prove themselves to be transferees for value having paid money in good faith and the fact that they are transferees without notice of the original contract.

23. Finding no merits in the present appeal, same is dismissed with no costs.

24. Pending application(s), if any, shall also stand disposed off.

(PANKAJ JAIN)
JUDGE

February 05, 2025
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No