

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

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RSA-5417-2019 (O&M)**Date of Decision: 16.01.2025****KULDEEP****.....Appellant****Vs.****MINDO BAI ALIAS NINDO BAI AND OTHERS****.....Respondent****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present: Mr. Mohan Sheoran, Advocate for
Mr. J.S. Hooda, Advocate
for the appellant.

***********DEEPAK GUPTA, J.**

By way of present Regular Second Appeal, plaintiff of the suit has approached this Court against concurrent findings of the Courts below, inasmuch as suit filed by him seeking decree for possession by way of specific performance regarding property in dispute was dismissed by the trial Court vide judgment dated 30.11.2013; and the appeal filed by him (appellant-plaintiff) had been dismissed by the First Appellate Court on 26.09.2018.

2. In order to avoid confusion, parties shall be referred to as per their status before the trial Court.

3. According to the plaintiff, defendant No.1 being owner of the suit land agreed to sell the same to him (plaintiff) vide an agreement dated 09.01.2002 for a consideration of ₹ 4 lakhs. An amount of ₹ 1 lakh was paid by the plaintiff as earnest money. The target date for execution of sale deed was fixed to be 09.11.2004, on which date the balance consideration was to be paid. However, on the said target date, defendant No.1 failed to turn up for executing the sale deed. Plaintiff came to know that in fact, defendant No.1 had already sold the suit



property to defendant No.2 by way of sale deed No. 4267 dated 25.02.2004, through her power of attorney and thereafter, defendant No.2 had sold the suit land of defendant No.3 vide sale deed Nos. 7237 & 7240 dated 08.12.2005. With these averments, decree for specific performance was sought.

4.1 Defendant No.1 did not dispute the execution of the agreement to sell dated 09.01.2002 with the plaintiff, but disputed the readiness and willingness of the plaintiff in performing the agreement. She further claimed that her brother Joginder Singh had procured her forged power of attorney and based thereon had executed the sale deed in favour of defendant No.2.

4.2 Defendant No.2 in his separate written statement asserted his right over the suit property as the bona fide purchaser, who had made all necessary inquiry before purchasing the suit property.

4.3 Defendant Nos. 4 and 5 filed separate written statement and asserted their right on the basis of sale deed, which was executed in their favour by defendant No.3 during the pendency of the suit.

5. Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court found due execution of agreement dated 09.01.2002 between plaintiff and defendant No.1 and that earnest money of ₹ 1 lakh had been paid by plaintiff to defendant No.1. However, it was found that defendant No.2 did not have any knowledge about the agreement between the plaintiff and defendant No.1 before purchasing the land vide sale deed dated 25.02.2004 and thus, found defendant No.2 to be bona fide purchaser for value. Suit for specific performance was accordingly dismissed, but plaintiff was held entitled to refund ₹1 lakh along with interest at the rate of 6 % per annum from the date of passing of the consideration till realization from defendant No.1. These findings as returned by the trial Court vide its



judgment dated 30.11.2013 have been affirmed by the First Appellate Court vide judgment dated 26.09.2018.

6. Assailing the aforesaid concurrent findings returned by the Courts below, it is contended by learned counsel for the appellant-plaintiff that once the execution of the agreement to sell dated 09.01.2002 between the plaintiff and defendant No.1 was duly proved and payment of earnest money was also proved, the suit was liable to be decreed for specific performance, as it was found that before the date fixed for execution of the sale deed, defendant No.1 had sold the suit property to defendant No.2. It is also contended that defendant No.2 was not bona fide purchaser.

7. After hearing contentions of learned counsel for the appellant and going through the record, I do not find merit in the appeal.

8. Both the Courts below have found defendant No.2 to be a bona fide purchaser. It will be relevant to reproduce the observations made by the First Appellate Court in this regard, which read as under:-

“15. Now to see the veracity in the stand of DW1 with regard to making the prior inquiry from entering into the transaction with defendant no.1 and other co-sharers for the execution of sale deed Ex.D2 as well as the factum of the bonafide purchaser on part of Dal Chand, this court has also gone through the deposition of PW1 who is none other but the plaintiff himself. Plaintiff as PW1 has filed his affidavit of evidence Ex.PW1/A wherein he has re-affirmed the contents of the plaint. Further, examination before the court of PW1 is very relevant for the decision of this case. The plaintiff when stepped into the witness box as PW1 has admitted that Joginder Singh was the brother of Smt. Mindo Bai (defendant no.1) who is the daughter of his paternal uncle (Tau), who has been residing at Ferozpur in the State of Punjab. Smt. Mindo Bai was also one of the co-sharers in the entire



land. One fact which is the most relevant for the decision of the case and admitted by PW1 is that Dal Chand was not aware about the agreement of plaintiff. He further admitted the fact that no notice was given by him to Dal Chand. This admission of the plaintiff has changed the entire fate of the case. The said admission on part of PW1 who is none other but the plaintiff himself goes to prove the stand of DW1 where he has stated that his father Dal Chand had made due inquiries prior the sale deed Ex.D2 and only then he had purchased the suit property including the other shares of all the cosharers. The said admission of the plaintiff also goes to show that in fact late Dal Chand had made all due and possible inquiries qua the suit land prior execution of the sale deed in his favour, as a man of ordinary prudence. It has been so stated in the affidavit of evidence Ex.DW1/A that upon inquiry from the revenue record and from other villagers, the suit property was found free from all encumbrances and only, thereafter the sale deed Ex.D2 was got executed. Thus, the plea that Dal Chand was a bonafide purchaser raised by the defendant has even been supported by the plaintiff when he stepped into the witness box and this fact has affected the stand of the plaintiff up to a great extent.

16. From the title of the parties, it is clear that the plaintiff is the resident of village Chhainsa whereas Dal Chand was resident of village Unchagaon. Thus, plaintiff, defendant no.1-Smt.Mindo Bai alias Nindo Bai and late Dal Chand were the residents of different places. Smt. Mindo Bai alias Nindo Bai -defendant no.1 has been residing in the State of Punjab at Ferozpur and there is no denial of this fact. It is also a fact that after execution of agreement to sell Ex.P1, defendant no.1 executed the sale deed in favour of late Dal Chand alongwith her other co-sharers in the joint property. As the parties i.e. the plaintiff, defendant no.1 and defendant no.2 late Dal Chand were residents of different places, thus, a possibility cannot be ruled out that the defendant no.1 might had kept concealed the factum of entering into an agreement to sell with plaintiff, from the defendant no.2 Dal Chand



that is why the plaintiff himself has admitted this fact that Dal Chand had no knowledge about the agreement to sell in favour of the plaintiff.

17. In these circumstances, as well as evidence came on the case file, both documentary as well as oral though the plaintiff has been able to prove the agreement to sell Ex.P1 in his favour, however, on the other hand, it is also proved on the case file that late Dal Chand had no knowledge about the execution of agreement to sell Ex.P1 at the time when sale deed in his favour was executed by the plaintiff qua the suit property. Thus, when the defendant no.2 Dal Chand had got the sale deed Ex.D2 executed in his favour from the plaintiff and other co-sharers, it was executed in his favour being a bonafide purchaser without having any notice of the agreement to sell Ex.P1 and on payment of due sale consideration amount. In these circumstances, the said sale deed cannot be set aside. The case law relied upon on part of the plaintiff in this regard i.e. **Gurmukh Singh Vir Singh and others; Bhura alias Bhura Ram; Himanshu Jain and Ganga Singh (since deceased) represented by his Lrs's case** (Supra) is clearly distinguishable from the factual matrix of the case though this court has the utmost respect to the law laid down therein. The defendants, thus, have discharged the onus which was cast upon them of the fact that late Dal Chand the first vendee of the suit land who had purchased the suit land from her vendor defendant no.1 was a bonafide purchaser.”

9. It is clear from the abovesaid observations that even the plaintiff-appellant candidly admitted during his cross-examination that defendant No.2 Dal Chand was not aware about the agreement between plaintiff and defendant No.1. The Appellate Court also found that plaintiff, defendant No.1 and Dal Chand (defendant N: 2) were residents of different places and that Dal Chand had made necessary inquiries before purchasing the land.



10. Learned counsel for the appellant could not convince this Court to point out any flaw in the abovesaid findings regarding the factum of defendant No.2 being the bona fide purchaser.

11. On account of entire discussion as above, this Court does not find any ground to interfere in the well-reasoned concurrent findings of fact as recorded by the Courts below. Holding the present appeal to be devoid of any merit, the same is hereby dismissed.

12. Pending application(s) if any shall stands disposed of.

16.01.2025

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**(DEEPAK GUPTA)
JUDGE**

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