

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No. 33 of 2007.

Reserved on : 24.10.2016.

Decided on : 28th October, 2016.

Paras Ram alias Govind**Appellant-Plaintiff.**

Versus

Smt. Jasmati and others**Respondents/defendants.**

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

*Whether approved for reporting?*¹ Yes

For the Appellant: Mr. Dinesh Sharma and Y. Paul, counsel for the appellant.

For Respondents No.1,3 to 8 and 10: Mr. G.R. Palsra, Advocate.

Sureshwar Thakur, Judge.

The instant Regular Second Appeal stands directed against the impugned judgement and decree recorded by the learned Presiding Officer, Fast Track Court, Mandi, District Mandi in Civil Appeal Nos.38/2004, 167 of 2005 whereby he in affirmation to the verdict recorded by the learned trial Court

¹ Whether reporters of the local papers may be allowed to see the judgment?

partly decreed the suit of the plaintiff qua damages to the tune of Rs.50,000/- wherein he had sought a decree for the specific performance of agreement to sell of 18.12.1991. The plaintiff/appellant herein stands aggrieved by the concurrently recorded renditions of both the learned Courts below wherefrom he has instituted the instant appeal herebefore.

2. The brief facts leading to the lis inter se the parties were that the defendant No.1 agreed to sell $\frac{1}{2}$ share of the land comprised in Khasra No.1060 and 1072, khata and khatouni No.37/48, measuring 7-10-16 bighas, situated in village Bhiarta, I 11, Rajgarh Balh, Tehsil Sadar, District Mandi, H.P. to the plaintiff through an agreement to sell on 18.12.1991 for a consideration of Rs.20,000/- in presence of independent witnesses. It is averred that on the day of execution of the aforesaid agreement to sell, defendant No.1 received a sum of Rs.19,000/- as an earnest money from the plaintiff in presence of the witnesses and duly acknowledged the receipt thereof. The balance amount of consideration was to be paid by the plaintiff to the defendant at the time of

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execution and registrtion of the sale deed. It is claimed that the plaintiff is in possession of the suit land for the last 20 years. The defendants have admitted the possession of the plaintiff over the suit land in the said agreement to sell and it has been written in the agreement to sell that whenever the plaintiff will ask the defendant No.1 for execution and registration of the sale deed, then the defendant No.1 will get the sle deed executed and registered. It is claimed that in the month of August, 1992, the plaintiff told defendant No.1 that he is going to Foreign country, Saudi Arabia and after returning from that country, the sale deed qua the suit land will be executed and registered to which defendant No.1 agreed. It is further averred by the plaintiff that when the plaintiff returned from the aforesaid country in the month of May, 1995, he requested defendant No.1 to perform his part of the agreement to sell and get the sale deed executed and registered in his favour but defendant No.1 avoided to do so. Thereafter when the plaintiff pressed defendant No.1 to do the needful, then it was disclosed to him that defendant No.1

has sold the aforesaid suit land to defendant No.2 though a sale deed registered and executed on 9.7.1993 which sale is illegal and void. It is also claimed that the plaintiff was always ready to perform his part of agreement to sell and was ready to bear entire expense of registration of the said sale deed. It is further averred by the plaintiff that on the basis of the aforesaid sale deed, the defendants are interfering with the possession of the plaintiff over the suit land since 10.01.1996 and are bent upon to alienate the suit land. The defendants are also trying to change the nature of the same. The plaintiff asked the defendants to admit his claim and get the aforesaid sale deed canceled but the defendants refused to do so. Hence, the present suit has been filed. It is prayed that a decree for specific performance of agreement dated 11.12.1991 be passed in favour of the plaintiff and against the defendants and a decree for permanent prohibitory injunction in favour of the plaintiff and against the defendant and other persons for restraining them from causing any interference with the suit land has also been sought.

3. Defendants No.1 and 2 contested the suit and filed joint written statement, wherein they have taken preliminary objections inter alia limitation, maintainability, and cause of action. It is claimed by the defendants that the defendant No.1 had not entered into the alleged agreement to sell of $\frac{1}{2}$ share out of the suit land on 18.12.1991. The said agreement is forged, fake and void ab initio and not enforceable in the eyes of law. It is further claimed that defendants did not receive Rs.19000/- as an earnest money from the plaintiff for consideration of the agreement to sell. It is further claimed that the plaintiff is not in possession of the suit land rather the suit land is in possession of the defendants. It is further claimed that the plaintiff was fully aware of the transaction of the suit land entered into inter se defendants No.1 and 2, which sale is perfectly legal, valid and defendant No.2 is owner in possession of the suit land. It is denied by the defendants that they are interfering over the suit land.

4. Defendant No.2 has filed amended written statement wherein, preliminary objection has been taken to the effect that a compromise deed dated 16.7.1999 executed by defendant No.1 in favour of the plaintiff is collusive one and the same has been filed only with a motive to defeat his claim and the said deed does not effect the valuable rights of defendant No.2 nor defendant No.2 is bound by it and the same be declared null and void. On merits, it is claimed that defendant No.1 is a bona fide purchaser and she made necessary inquiry about the title of defendant No.1 before purchasing the suit land. Defendant No.1 was in possession of the suit land prior to execution of the sale deed dated 9.7.1993 in favour of defendant No.2. Defendant No.2 has purchased the suit land for a sum of Rs.50,000/- from defendant No.1 and since then, defendant No.2 is owner in possession of the suit land. She has prayed for the dismissal of the suit of the plaintiff.

5. On the pleadings of the parties, the learned trial Court struck the following issues inter-se the parties at contest:-

1. Whether the defendant No.1 entered into an agreement to sell the suit land for consideration of Rs.20,000/- on 18.12.1991 in favour of the plaintiff, as alleged?OPP
2. Whether the plaintiff has performed and is still ready to perform his part of agreement, as alleged? OPP
3. If issue Nos. 1 and 2 are proved, whether the plaintiff is entitled for the relief of specific performance of contract, as prayed?OPP
4. Whether the sale deed executed by defendant No.1 in favour of defendant No.2 is wrong and illegal?OPP
- 4(a). Whether compromise deed dt. 16.7.1999 executed by defendant NO.1 in favour of the plaintiff is collusive as alleged? If so its effect? OPD-2
- 4(b). Whether defendant No.2 is a bonafide purchaser for consideration, as alleged, if so its effect? OPD-2
5. Whether the suit is barred by limitation?OPD
6. Whether the suit is not maintainable? OPD
7. Whether the plaintiff has no cause of action? OPD
8. Relief.

6. On an appraisal of evidence, adduced before the learned trial Court, it partly decreed the suit of the plaintiff/appellant herein. In an appeal, preferred therefrom by

the plaintiff/appellant herein before the learned first Appellate Court, the latter Court while dismissing the plaintiff's appeal, affirmed the findings recorded by the learned trial Court.

7. Now the plaintiff/appellant herein has instituted herebefore the instant Regular Second Appeal assailing therein the findings recorded in its impugned judgment and decree by the learned first Appellate Court. When the appeal came up for admission on 22.12. 2008, this Court, admitted the appeal instituted by the plaintiff/appellant against the judgment and decree of the learned first Appellate Court, on the hereinafter extracted substantial question of law:-

1. Whether the Courts below were correct in declining the relief of specific performance to the appellant herein?

Substantial question of Law No.1:

8. Defendant No.2 despite prevalence at the relevant time of an agreement to sell qua the suit land executed inter se the plaintiff and defendant No.1 acquired title thereto under a registered deed of conveyance executed in her favour by defendant No.1. Initially, the learned trial Court omitted to

on the contentious pleadings of the parties at contest strike issues No.4(a) and 4(b). Both the aforesaid issues stood added under an order recorded on 8.10.2002 by the learned trial Court. The onus to adduce evidence thereupon was cast upon defendant No.2. She was directed to lead evidence thereupon on 17.12.2002. However, on 17.12.2002, the learned counsel appearing on behalf of defendant No.2 recorded a statement before the learned trial Court holding a communication therein of his not intending to lead evidence thereupon, whereupon the learned trial Court closed opportunity to defendant No.2 to adduce evidence in support of additional issues No. 4(a)and 4(b), whereupon onus in discharge thereof stood cast upon her. Imperatively, hence, defendant No.2 who during the currency of the relevant agreement to sell qua the suit land executed inter se the plaintiff and defendant No.1 had acquired titled thereto in pursuance to a registered deed of conveyance executed vis-a-vis her by defendant No.1, was enjoined to protect the relevant sale deed by making vivid pronouncements held in

cogent evidence of probative worth qua hers being an ostensible owner qua the suit land. The apposite pronouncements qua the acquisition of title by her qua the suit land under a registered deed of conveyance executed vis-a-vis her by defendant No.1 holding validation were enjoined to hold invincible display qua hers being a bonafide purchaser of the suit land for value, the imperative necessary proven ingredients whereof by adduction of unflinching evidence were qua hers preceding hers acquiring title qua the suit land hers holding an in depth incisive inquiry vis-a-vis the suit land specifically qua the trite factum qua existence thereat of a binding contractual agreement inter se the plaintiff and defendant No.1 qua the suit land, inquiry whereof unraveling disaffirmative elicitations whereupon alone she could be construed to be a bonafide purchaser of the suit land for value also thereupon she could hold an empowerment to validate the registered deed of conveyance executed qua the suit land during the currency inter se her and defendant No.1 a binding contractual agreement qua the suit land inter se

them. However, she omitted to discharge the onus cast upon her qua issues No.4(a) and 4(b) which stand extracted hereinafter:-

- “4(a) Whether compromise deed dt. 16.7.1999 executed by the defendant No.1 in favour of the plaintiff is collusive, as alleged?OPD-2
- 4(B) Whether the defendant No.2 is a bonafide purchaser for consideration, as alleged, if so, its effect?OPD-2.

Her omission to adduce evidence on the aforesaid issues warranted a natural conclusion from both the learned Courts below qua hence hers not proving the trite factum qua hers preceding hers acquiring title to the suit land under a registered deed of conveyance executed vis-a-vis her by defendant No.1, hers holding an incisive in depth inquiry qua the suit land specifically qua the prevalence thereat of the relevant binding agreement to sell executed inter se the plaintiff and defendant No.1, yet hers standing disabled to unearth the aforesaid factum wherefrom the concomitant derivative is qua hers being not construable to be a bonafide purchaser qua the suit land for value nor hers being an

ostensible owner thereof. Contrarily, for omission aforesaid she is to be construed to acquiesce to the factum of hers holding knowledge qua the prevalence at the relevant time of the relevant binding agreement to sell qua the suit land recorded inter se the plaintiff and defendant No.1. Corollary whereof, is qua hence, the registered deed of conveyance executed qua the suit property inter se her and defendant No.1 warranting invalidation. Both the learned Courts below even without defendant No.2 discharging onus qua additional issues No.4(a) and 4(b) subsequently struck under the orders of the learned trial Court had inaptly pronounced qua hers being construable to be a bonafide purchaser of the suit land for value. The compromise deed executed inter se the plaintiff and defendant No.1(since deceased) comprised in Ex. Px, whereupon both enjoined the learned trial Court to decree the suit of the plaintiff, though apparently stands coloured with a stain of collusiveness also visibly it stands recorded to defeat the interests of defendant No.2 in the suit land, especially when she acquired title thereto under a registered

deed of conveyance recorded inter se her and defendant No.1, she dehors Ext.PX was also obliged to adduce the relevant germane evidence on trite issues No.4(a) and 4(b) qua hers hence being construable to be a bonafide purchaser of the suit land for value. Reiteratedly when she omitted to do so, the effect, if any of collusiveness occurring inter se the plaintiff and deceased defendant No.1 in the drawing up Ex. Px is rendered frail, whereas the omission of defendant No.2 to discharge the onus cast upon her qua additional issues aforesaid assumes paramount relevance. Since, onus thereto stood undischarged by her, the apt sequel thereof is qua defendant No.2 being not construable to be an ostensible owner of the suit land nor the registered deed of conveyance executed inter se the deceased defendant No.1 and defendant No.2 holding any validation. Also subsequent alienations of the suit land made by defendant No.2 in favour of respondents No. 3 to 10 herein also suffer from an alike stain of invalidation. All the aforesaid subsequent sale deeds are also quashed and set aside.

13. The above discussion unfolds the fact that the conclusions as stand arrived at by the learned first Appellate Court as also by the learned trial Court standing not based upon a proper and mature appreciation of the evidence on record. While rendering the apposite findings, the learned first Appellate Court as also the learned trial Court have excluded germane and apposite material from consideration. Accordingly, the substantial question of law is answered in favour of the plaintiff/appellant and against the defendants/respondents.

14. In view of above discussion, the present Regular Second Appeal is allowed and the judgements and decrees rendered by both learned Courts below are set aside. Consequently, the suit of the plaintiff is decreed for specific performance of contract of 18.12.1991 and the legal representative of deceased defendant No.1 i.e. respondent No.2 is directed to execute sale deed qua the suit land comprised in Khata Khatuni No. 37/48, khasra Nos. 1060, 1072 measuring 7-10.16 bighas situated in village Bhiarta,

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Illaqua Hatgarh Balh, Tehsil Sadar, District Mandi, H.P. in favour of the plaintiff within two months from today. The sale deed executed by defendant No.1 in favour of defendant No.2 is quashed and set aside. In sequel, subsequent alienations of the suit land made by defendant No.2/respondent No.1 herein in favour of respondents No.3 to 10 herein are also quashed and set aside. Decree sheet be prepared accordingly.

**(Sureshwar Thakur)
28th October, 2016.
Judge.
(jai)**