

**2013 C L C 810**

**[Lahore]**

**Before Muhammad Ameer Bhatti, J**

**Mst. GHULAM FATIMA through Special Attorney----Petitioner**

**Versus**

**NAZIR AHMAD through L.Rs. and others----Respondents**

Civil Revision No.943 of 2002, decided on 23rd November, 2011.

**Specific Relief Act (I of 1877)---**

---Ss. 27(b) & 12---Suit for specific performance of agreement---Plaintiff who purchased suit land on the basis of agreement to sell, paid consideration amount and had obtained possession of suit land---Vendor of suit land in violation of terms of the agreement to sell, subsequently sold the land to subsequent vendees---Plaintiff filed suit against said subsequent sale in favour of the subsequent vendees, praying that said subsequent sale be declared illegal, unlawful, void and inoperative against the rights of the plaintiff---Said suit had concurrently been dismissed by the Trial Court and Appellate Court---Validity---Subsequent vendees were bound to prove on record that their good faith and lack of knowledge of earlier sale in favour of bona fide vendee after taking reasonable care and that they were entitled to protection under S.27(b) of the Specific Relief Act, 1877---Subsequent vendees had failed to prove on record the efforts made by them to get verify the fact that in what capacity the plaintiff possessed the land---Possession of vendor would constitute a notice to the subsequent vendees, who were required to make careful enquiry in respect of prior transaction---Subsequent vendees were obliged to prove on record, apart from payment of vendees; that they had acted in good faith; that they had no notice of original contract/agreement and that they, in the said two aspects had taken reasonable care---Subsequent vendees had not taken reasonable care to find out any previous agreement or to find out that the land was free from all encumbrances---Mere statement of that fact was not sufficient to hold that subsequent vendees had taken reasonable care---Subsequent vendees, in circumstances were not entitled to get protection of S.27(b) of Specific Relief Act, 1877---Concurrent findings of the courts below were not tenable in the eyes of law as same were based on misreading and non-reading and had misconstrued the provision of law---Judgment and decree passed by the courts below were set aside and suit filed by the plaintiff was decreed.

Rashid Ahmad and 7 others v. Muhammad Bashir and 2 others 2005 YLR 2914; Ghulam Mustafa and others v. Muhammad Shafi and others 2005 YLR 2768 and Saheb Khan through Legal Heirs v. Muhammad Pannah PLD 1994 SC 162 rel.

Muhammad Ashraf v. Ali Zaman and others 1992 SCMR 1442 distinguished.

Ch. Muhammad Rafique Warraich for Petitioner.

Ch. Iqbal Ahmed Khan for Respondents.

Date of hearing: 23rd November, 2011.

## **JUDGMENT**

**MUHAMMAD AMEER BHATTI, J.---** This Civil Revision is directed against the judgment dated 21-1-2002, passed by the learned First Appellate Court whereby an appeal filed by the present petitioner against the judgment and decree dated 25-10-2001 of the learned Civil Judge dismissing the suit of the present petitioner, however, ordering the refund of consideration amount to the plaintiff/petitioner.

2. The brief facts of the case are that the petitioner brought a suit for possession through specific performance in respect of land measuring 8-K owned by Nazir Ahmed respondent No.1 on the basis of an agreement to sell dated 19-6-1980 for consideration of Rs.8,000/- claimed to have been paid at the time of an agreement. It is also claimed in the plaint that the possession of the land in dispute has been handed over to the petitioner at the time of an agreement. It is also the case of the plaintiff as set up in the plaint that before the agreement to sell the father of the petitioner was in cultivation possession of the land in dispute for the last 15 years. The respondent No.1 sold out this disputed land to the predecessor in interest of respondents No.2-A to 2-F and 3A to 3-C, hence seeking consequential relief that the sale-deed No.10090 dated 26-9-1988 in favour of the predecessor in interest of the respondents to be declared illegal, unlawful, void and inoperative against the rights of the plaintiff. The case set up in the plaint by the present petitioner was that the owner agreed to sell the said land but the respondent No.1/vendor in violation of terms of the agreement subsequently sold the land in favour of the predecessor in interest of the other respondents. The suit was contested by the respondent No.1/vendor as well as the subsequent vendees by filing their independent written statements. Issues were framed and parties led their evidence according to their onus on issues.

3. The case as set up by the subsequent vendees/respondents was that they had purchased the land for a consideration and they had no notice of prior purchase. All the issues framed by the learned trial Court from the divergent pleadings of the parties have been decided in favour of the petitioners by the learned trial Court, however, issue No.1-A bona fide purchaser had been decided by the learned trial Court in favour of the subsequent vendees/respondents/defendants. Consequently, the suit was dismissed with the further declaration that the petitioner/ plaintiff is entitled to recover the amount of consideration paid by him at the time of agreement to sell. Aggrieved of the judgment and decree of the learned trial Court, the petitioner filed an appeal before the learned First Appellate Court which was dismissed vide judgment dated 21-1-2002.

4. Learned counsel for the petitioner contends that both the Courts below concurrently held that the agreement to sell of the petitioner as valid one and this concurrent finding of fact has not been challenged by the respondents/defendants, hence that have attained finality. The only question for determination before this Court is that whether the subsequent vendees/respondents Nos.2 to 11 are the bona fide purchasers with notice as issue framed by the learned trial Court according to the evidence of the subsequent vendees. Learned counsel for the petitioner contends that the respondents/subsequent vendees have failed to prove this fact on record as condition mentioned in section 27(b) of Specific Relief Act of 1877. The respondents/subsequent vendees have failed to prove this issue in accordance with law. Further added that it was the duty of the subsequent vendees to prove on record, good faith and lack of knowledge of the earlier agreement after taking reasonable care and they are not entitled of protection under section 27(b) of Specific Relief Act of 1877, hence the observations of both the learned Courts below that after the statement of the subsequent vendees and P.W.4, the onus has been shifted to the present petitioner is not in consonance of law laid down by this Court. Reliance is placed on *Rashid Ahmad and 7 others v. Muhammad Bashir and 2 others* (2005 YLR 2914) and *Ghulam Mustafa and others v. Muhammad Shafi and others* (2005 YLR 2768). Further contended that from the record it has been established that the respondents/subsequent vendees have failed to prove on record the efforts made by them to get verify the fact that in what capacity, the present petitioner possessed the land. It was the duty of the subsequent vendees to verify from the present petitioner/plaintiff before entering into an agreement. The respondents/vendors have not denied the factum of execution of agreement to sell with the present petitioners. It is further contended that the possession of the present petitioner was sufficient notice to the respondents but they have failed to establish any contract nor it is the case of the respondents/subsequent vendees that they have established any contract with the present petitioners to find out the status of possession. Both the Courts below have failed to consider the material evidence, hence they have committed illegality and irregularity by misreading and non-reading of the record. As such, +this Court has ample jurisdiction to interfere in such like concurrent findings of facts even recorded by both the Courts below. Reliance is placed on *Saheb Khan through Legal Heirs v. Muhammad Pannah* (PLD 1994 SC 162).

5. On the other hand, learned counsel for the respondents contends that the

concurrent findings of fact have been recorded by both the Courts below after carefully examining the record of the case, hence this Court lacks jurisdiction to interfere in the concurrent findings of facts. It is further contended that Ghulam Fatima has been shown the vendee of this disputed land but she was not in possession of the suit land instead of her, her husband was shown in the revenue record as tenant at will and the subsequent vendees/respondents verified all these facts from the Revenue Record, hence they are bona fide purchasers and they have proved this fact on record. Reliance is placed on Muhammad Ashraf v. Ali Zaman and others (1992 SCMR 1442).

6. I have considered the arguments of both the learned counsel for the parties and have gone through the record of the case as well as precedents referred on behalf of the parties.

7. It is proper to first re-produce the relevant issue in dispute:

"Whether defendants No.2 and 3 are bona-fide purchasers with consideration and without notice? OPD

Since both the Courts below concurrently decided all the issues in favour of the present petitioner, which findings have not been challenged in appeal or through cross-objection by the defendants/subsequent vendees, hence that have attained finality. So far as this issue is concerned, it is appropriate to reproduce the relevant portion of the judgment for ready reference:

"I have gone through the evidence on record with the assistance of the learned counsel for the parties. All the D.Ws. are consistent on the point that defendants Nos.2 and 3 were bona fide purchasers for valuable consideration without notice of any previous agreement to sell and that they had purchased the land in question with other land from defendant No.1 and co-sharers after verification of Revenue Record wherein there was no entry regarding any agreement to sell in favour of the plaintiff. Defendants Nos.2 and 3 purchased land measuring 112-K 14-M including the land in question measuring 8-K through sale deed dated 26-9-1988 (Ex.D.1), which stands incorporated in register Haqdaran Zameen for the year 1989-90 Exh.D.2. The defendants Nos.2 and 3 have been shown in possession of land purchased by them in Khasra Girdawri Exh.D.3. P.W.2 namely Muhammad Siddique during his cross-examination frankly admitted that defendant No.1 and his co-sharers sold their entire land in favour of defendants Nos.2 and 3. He also admitted that defendants Nos.2 and 3 purchased the land in question with other land from defendant No.1 and his co-sharers in good faith after payment of sale price. Defendants Nos.2 and 3 were residing at Nankana Sahib, before the purchase of land in question with other land

through sale deed Exh.d.1. Nothing is on record to show that defendants Nos.2 and 3 had any knowledge of impugned agreement to sell. All the D.Ws have categorically stated that defendants Nos.2 and 3 had no knowledge of any agreement to sell between the plaintiff and defendant No.1. After their statements, the onus heavily shifted upon the plaintiff to prove that they had knowledge of impugned agreement to sell at the time of execution of sale deed Exh.D.1. The plaintiff has not produced any cogent evidence to prove these facts. Her own witness namely Muhammad Siddique P.W.2 has frankly admitted during cross-examination that defendants Nos.2 and 3 were bona fide purchasers for valuable consideration without notice. She is bound by the admission made by her witnesses. Defendants Nos.2 and 3 have succeeded in discharging the initial burden to the effect that they were bona fide purchasers for valuable consideration without notice, wherein the plaintiff has miserably failed to bring any material evidence on record to displace contention of subsequent vendees".

The main thrust of the findings of the learned trial Court is that P.W.2 has candidly admitted during cross-examination that the defendants Nos.2 and 3 were bona fide purchasers for valuable consideration without notice. I find that the learned trial Court has misread and misconstrued the relevant portion of the evidence of P.W.2. It is necessary to re-produce the exact wording of P.W.2: I have minutely gone through the evidence of the P.W.2 with the assistance of the learned counsel. I find that the learned trial Court while relying on this sentence had added the word "without notice". There is nothing like this in the evidence of the P.W.2, hence to this extent the findings of the learned trial Court are not correct as per the record. It is also maintained by the learned trial Court that since the defendants Nos.2 and 3 had no knowledge about the agreement to sell as categorically stated by them in their evidence, hence the onus has shifted upon the plaintiff to prove that the subsequent vendees had the knowledge of impugned agreement to sell at the time of execution of sale-deed Exh.D.1. Here the learned trial Court has again misunderstood the relevant provisions of law and the law laid down by this Court as well as the Hon'ble Supreme Court. It is established principle of law that possession of vendees constitutes a notice to the subsequent vendees who is required to make a careful enquiry in respect of prior transactions. It is the duty and obligation of the respondents/subsequent vendees to prove on record, apart from payment of vendees:

- (a) He acted in good faith.
- (b) He had no notice of the original contract/agreement and
- (c) In the above two aspects he took reasonable care.

The findings of the learned trial Court based on simple statement of the defendants/subsequent vendees, do not inspire any confidence to the effect that any reasonable care has been taken to find out any previous agreement or to find out that the land was free from all encumbrances. Mere statement of this fact is not sufficient to hold that the subsequent vendees had taken reasonable care. The most important fact, the possession of the present petitioners which is clear notice to the subsequent vendees as he has failed to establish on record that at the time of making an enquiry, he established contract with the present petitioners who were found to be in possession, albeit as tenant. It is not the case of the respondents/subsequent vendees that he established any contract with the present petitioners who are in possession of this land. Had they got in touch with the present petitioners, position would have been altogether different? In such like circumstances, it cannot be held that the subsequent vendees/respondents have succeeded in establishing all three ingredients for the protection of section 27(b) of Specific Relief Act, 1877. The finding of the learned trial Court is also not in consonance with the law laid down by the Supreme Court. Respondent has relied on Muhammad Ashraf v. Ali Zaman and others (1992 SCMR 1442) where it has been held that after establishing on record through a positive evidence that he had no notice to first sale and he has purchased the property for consideration, the onus shifted on the first vendees to disprove the assertion made by such subsequent vendees by bringing such material so as to displace the contention of the subsequent purchaser. To my mind, from the evidence, the subsequent vendees/respondents have failed to establish "reasonable care" at the time of entering into a sale, hence they are-not entitled to get the protection of section 27(b) of Specific Relief Act, 1877. The findings of the learned First Appellate Court are also in line with the findings of the learned trial Court, hence are not tenable in the eye of law as based on misreading and non-reading and misconstrued the provision of law, thus liable to be set aside by exercising the powers provided by section 115 of C.P.C. Consequently, this petition is allowed and the judgment and decree passed by the learned both the Courts below are set aside.

8. Consequently, the suit of the present petitioners is hereby decreed. The parties to bear their respective costs.

HBT/G-62/L

Petition allowed.