

**(2013) 05 AHC CK 0432**

**Allahabad High Court**

**Case No:** Second Appeal No. 1246 of 1975

Desha and Another

APPELLANT

Vs

Dwijendra Singh and Another

RESPONDENT

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**Date of Decision:** May 30, 2013

**Citation:** (2013) 8 ADJ 171 : (2013) 99 ALR 293 : (2013) 6 AWC 5902 : (2013) 120 RD 375

**Hon'ble Judges:** S.U. Khan, J

**Bench:** Single Bench

**Advocate:** R.C. Gupta, Anoop Tiwari, Anoop Trivedi, N.B. Nigam and Ramesh Singh, for the Appellant; G.N. Verma, Arun Kumar and Jamal Ali, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

S.U. Khan, J.

Heard learned counsel for the parties.

This second appeal arises out of Original Suit No. 18 of 1969 Dwijendra Singh v. Kaliya (or Kaliyan), Desha and Rakesh. The suit was filed for specific performance of agreement for sale of agricultural property alleged to have been executed on 27.2.1969 by defendant No. 1 Kaliya in favour of plaintiff. In the agreement for sale total sale consideration was shown to be Rs. 8,000/- out of which Rs. 5,000/- were shown to have been paid at the time of execution of agreement for sale. Within two weeks of execution of the alleged agreement for sale Kaliya sold the property in dispute to defendant Nos. 2 and 3 Desha and Rakesh for Rs. 10,000/- on 11.3.1969. Desha paid sale consideration of Rs. 3,000/- and Rakesh Rs. 7,000/-. The suit was decreed by II Civil Judge, Hamirpur on 18.3.1974. Against the said decree two appeals were filed one was filed by subsequent purchasers Desha and Rakesh which was numbered as Civil Judges Appeal No. 27 of 1974. The other appeal was filed by Kaliya the original bhoomidhar of the land in dispute which was numbered as Civil Judges Appeal No. 28 of 1974. Both the appeals were consolidated and dismissed on 4.10.1974 by District Judge, Hamirpur hence this second appeal. This Second appeal was filed by Desha and Rakesh the subsequent purchasers. This appeal was

dismissed as abated on behalf of appellant No. 1 through order dated 16.5.2013 accordingly now the Second appeal survives only on behalf of appellant No. 2 Rakesh.

Defendant No. 1 Kaliya contended that he had not executed any agreement for sale in favour of the plaintiff on 27.2.1969.

2. Subsequent purchasers Desha and Rakesh pleaded that firstly no agreement for sale had been executed by defendant No. 1 in favour of plaintiff and secondly they were not aware of the agreement for sale when they purchased the property on 11.3.1969.

3. As far as the finding of the Courts below regarding execution of the agreement for sale dated 27.2.1969 is concerned, it is basically findings of fact.

Accordingly the following legal question requires consideration in this Second appeal.

Whether on the facts as found by the Courts below appellant No. 2 can be held to have notice of the agreement dated 27.2.1969 at the time of purchasing the property on 11.3.1969 in accordance with Section 19(b) of Specific Relief Act.

(As the Second Appeal was admitted on 18.9.1975 hence there was no requirement of framing substantial question of law at that time)

4. Both the Courts below discussed several authorities of different High Courts regarding the question of onus and burden to prove the notice/knowledge of the agreement for sale to the subsequent transferees. However, as both the parties had adduced evidence regarding that aspect hence the question of burden to prove was merely academic. Issue No. 2 related to the notice of the agreement to the subsequent transferees. This is the point which has mainly and forcefully been argued by learned counsel for the appellant.

In 1969 Rakesh defendant No. 3 was minor and he purchased the property through his father Radhey Shyam. He was also sued through Radhey Shyam and Radhey Shyam was examined as D.W.-5.

5. Both the Courts below have mentioned that it was alleged on behalf of the plaintiff that Desha defendant No. 2 one of the subsequent purchasers was in the service of Radhey Shyam (father of respondent No. 3) and actually whole of the property was purchased by Radhey Shyam. It has not been explained that if actually the entire property was purchased by Radhey Shyam then what was the reason for purchasing part of the property in the name of Desha. The Courts below did not believe the version of Desha who had appeared as D.W.-4 that he was not an employee of Radhey Shyam on the basis of a statement given by him u/s 161 Cr.P.C. in a criminal case on 19.6.1969 in which he admitted that he was in service of Radhey Shyam.

6. Plaintiff had stated that he was residing with his Mama (maternal uncle) Raghuraj Singh. The Courts below held that Radhey Shyam in his statement given in the Court of J.O. Mahoba admitted that Raghuraj Singh had attempted to prevent him from purchasing the land when the talks of sale were going on. From this statement the Courts below drew the inference that "it is thus apparent that Radhey Shyam had knowledge of the agreement." The trial Court further held as follows: "Even if it is assumed for the sake of argument that still he had no definite knowledge of the agreement, that would at least have put him on the guard for making inquiries in that respect".

7. The trial Court further held that Desha D.W.-4 stated in his oral deposition that at the time of execution of sale-deed Raghuraj Singh had a talk with Radhey Shyam but he was not aware of the nature thereof she was not within hearing distance. When evidence was recorded Raghuraj Singh had died.

8. The plaintiff in his oral statement stated that his maternal uncle Raghuraj Singh had informed him that vendees were asked not to purchase the land in the face of the agreement. There was absolutely no explanation as to why plaintiff did not ask the subsequent purchasers to desist from purchasing the property. The most important thing is that plaintiff or any of his witnesses nowhere stated that defendant Nos. 2 and 3 the subsequent purchasers had been shown the agreement for sale dated 27.2.1969. Relationship between Radhey Shyam and Raghuraj Singh was not cordial. First Information Report had also been lodged. The words "notice of the original contract" used in Section 19(b) of Specific Relief Act refer to notice of the actual original contract and not merely a statement by some one to the subsequent vendee that there was an agreement for sale. If a person wants to purchase an immovable property, he is not supposed to desist and drop the idea merely because some one tells him that there is an agreement for sale. No reason has been given as to why the subsequent vendees or Raghuraj Singh father of one of the subsequent vendees should have believed the bald statement of Raghuraj Singh. Notice u/s 19(b) of the Act can only be when agreement is shown to the person purchasing the property/subsequent purchaser.

9. Firstly in order to frustrate sale-deeds prior agreements for sale were being manufactured liberally. Secondly even in case of genuine prior agreement for sale it was very difficult to prove that subsequent purchaser had knowledge of the same or not. In order to rectify this utterly confusing situation State of Uttar Pradesh made it mandatory with effect from 1.1.1977 that agreement for sale of immovable property must be registered.

10. Accordingly the above question of law is decided in favour of appellant No. 2 and it is held that he had no such knowledge of the agreement as is referred to u/s 19(b) of Specific Relief Act.

The Second Appeal is therefore allowed only on behalf of appellant No. 2. It has already been dismissed on behalf of appellant No. 1. Sale-deed of appellant No. 2 dated 11.3.1969 is held to be valid. The suit stands decreed only in respect of part of the property in dispute which was sold through sale-deed in favour of defendant No. 2/appellant No. 1 Desha. The suit is dismissed in respect of that part of the property in dispute which was sold to appellant No. 2 Rakesh. However, in order to adjust the equities and in exercise of power under Order-7 Rule 7 C.P.C. some times a winning party may be directed to pay some compensation to the other side even though winning party may not be at fault. Accordingly, it is directed that appellant No. 2 shall pay Rs. 50,000/- to plaintiff respondent No. 1.

Second Appeal is allowed as above. The impugned decree is varied accordingly.