

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No. 4277 of 2011
Date of decision : January 27, 2015

Bindrawati

....Appellant

versus

Sanjay Kumar

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. A.P.Bhandari, Advocate, for the appellant

Mr. Lokesh Sinhal, Advocate, for the respondent

Fateh Deep Singh, J. (Oral)

This is second attempt of the appellant-defendant after her initial failure before the court of learned Additional Civil Judge (Senior Division), Faridabad which through judgment and decree dated 9.3.2010 has decreed the suit of the plaintiff Sanjay Kumar now respondent, against the present appellant for possession by way of specific performance. The appeal by the defendant before the first appellate court stood dismissed by the learned District Judge, Faridabad through judgment and decree dated

25.8.2011 and that is how the present appeal has come about.

Heard Mr. A.P.Bhandari, Advocate, for the appellant and Mr. Lokesh Sinhal, Advocate, for the respondent and perused the record.

The stand of the plaintiff in brief is that Bindrawati was the owner of a house detailed in the head note and she agreed to sell the same to the plaintiff for total consideration of Rs 5,25,000/- and out of which received initially a sum of Rs 30,000/- and thereafter a sum of Rs 70,000/- on 18.7.2005 in all totalling Rs 1 lac and it was fixed that the sale deed would be executed within one month from the date of agreement to sell i.e. 17.8.2005. The plaintiff finding the defendant evasive has filed the suit in question.

Appreciating the arguments of the two sides, the invariable admission of the defendant shows she admits that she has signed/thumb marked document in question though claims that her neighbour Dinesh Kumar, one Satpal and her husband who is signatory to this agreement to sell on the pretext of giving loan had obtained her thumb impressions on blank papers, thus, in terms of sections 101 and 102 of the Evidence Act onus shifts upon her to refute the same. The plaintiff has examined himself as PW1 and got the same corroborated through PW2 Dinesh Kumar and has proved on the record payment receipts Ex. P1 and P3, agreement Ex. P2 and notice Ex. P4, postal receipts Ex. P5, P6 and P7 and affidavits Ex. P8 and

P9 whereas on the other hand the defendant one Sunita as DW1, SS Mata as DW2, I.P. Alok as DW3, Santosh as DW4 and proved documents by way of general power of attorney Ex. D1, Sale deed Ex. D2, site plan Ex. D3, photographs Ex. D4 and D5, copies of documents Ex. D6 to D12, Ex. DW3/A, Ex. DW3/C, and Ex., DW3/C. The learned trial court had framed the following issues:-

1. Whether the plaintiff is entitled to get the possession of the suit property by way of specific performance of contract dated 17/18.7.2005? OPP
2. . Whether the suit of the plaintiff is not maintainable in the present form ?OPD
3. Whether the suit is bad for non-joinder of necessary parties ?OPD
4. Whether the suit is barred u/o 2 Rule 2 CPC and u/o 7 Rule 11 CPC ?OPD
5. Whether the plaintiff has no locus standi to file the present suit ?OPD
6. Whether the plaintiff has no cause of action to file the present suit ?OPD
7. Whether the suit is bad for want of concealment of material facts by the plaintiff from the court ?OPD
8. Whether the suit is bad for want of property court fee ? OPD
9. Relief.

This Court keeping in view the submissions of the two sides

have framed the following substantial question of law:-

“Whether the plaintiff is entitled to specific performance and possession of the property in dispute, if so, to what effect ?”

It cannot be the refuse of the appellant that she was deceived in executing the document when her own receipt Ex. P1 thumb marked by her is countersigned by her husband and that fact that agreement to sell Ex. P2 was also executed by her at that time and she had received Rs 70,000/- are corroborative of this fact and the transaction which is further materially established by the payment receipt Ex. P3. The witnesses to this including Dinesh Kumar have been examined by the plaintiff. The most material lacunae that has cropped up in the case of the appellant that the defendant has not stepped into witness box to state her side of the case and therefore, in view of law laid down in **Vidhyadhar vs Manikrao & Anr. AIR, 1999 SC 1441**, an adverse presumption needs to be drawn against her along with the fact that even her husband has not bothered to testify and refute the contentions of the plaintiff regarding his presence and the execution of the documents concerned which strongly goes against the defendant and had been taken note of by the learned trial court. The examination of her daughter Sunita DW1 by way of DW1/A is mere based on hearsay and rather what is sought to be adduced from the documents relied upon by the

defendant that in consequence of this agreement to sell, the defendant has sought to file a criminal complaint for cheating against the plaintiff are matters which certainly throw much light on what was at the back of the mind of the defendant. The mere assertions that sought to be raised on behalf of the appellant have not been established are matters which goes against the defendant as she has failed to rebut the evidence of the plaintiff as well as of attesting witnesses of the agreement and receipt. Even the civil suit Ex. D6 filed by the appellant by way of permanent injunction as well as declaration shows that on her statement Ex. P10 and P11, the same stood withdrawn and thus was dismissed certainly is a distressing feature for the appellant. Even otherwise, the stand of the appellant in the suit and that by way of notice sent by her Ex. P4 are self contradictory wherein in para no. 4 by her own admission, the appellant claims and accepts as to the agreement to sell was executed by her. The provisions of section 14 of the Specific Relief Act, 1963 (in short, the Act) lays down contracts which are not specifically enforceable and counsel for the appellant could not convince this Court how this case of the plaintiff falls within the ambit of this section and to the mind of this Court in view of the relative stand of the two sides and the evidence proved, the plaintiff certainly qualifies to obtain specific performance in terms of section 15 of the Act and therefore, the learned trial court in judicial exercise of discretion provided under section

20 of the Act has rightly decreed the suit for specific performance. Though with much force has sought to be raised by counsel for the appellant Mr. A.P. Bhandari that the plaintiff in view of law laid down in **I.S.Sikandar (D) By Lrs vs K. Subramani and others, 2014(1) R.C.R. (Civil) 236** must first obtain declaratory relief to enforce the agreement to sell certainly does not helps case of the plaintiff as in the cited ratio, there was termination of the agreement to sell by the vendor which is not so in the present case. There has been consistent finding of the two courts below. The counsel for the appellant could not convince this Court how the same were perverse or contrary to the law and the facts and evidence proved on the record. The substantial question of law is answered in favour of the plaintiff. The appeal of the appellant is hopelessly without any merits and stands dismissed.

January 27, 2015
'tiwana'

(Fateh Deep Singh)
Judge