

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

RSA No. 1941 of 2012 (O&M)

Date of decision: 24.08.2015

Singh Ram

... Appellant

versus

Shankuntla Devi

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. K.S. Gultai, Advocate for the appellant.

K.Kannan, J.

The defendants against whom the decree for specific performance was granted by the trial Court and affirmed by the Appellate Court is in appeal before this Court. The suit for specific performance was founded on an agreement dated 10.04.2002 under the terms of which an amount of Rs. 2,10,000/- was paid as advance and the balance was required to be paid on or before 08.04.2003 and sale deed obtained. The plaintiff would state that she was at the sub-Registrar's office on 08.04.2003 and had her presence noted in an affidavit signed before the registering officer. She issued a notice on 08.05.2003 calling upon the defendant to execute the sale and when when could not obtain the valid response the suit had been filed.

The defendants denied the agreement and at the trial brought out the following discrepancies in evidence and pleadings:-

1. In the notice issued the reference was to an advance of Rs.

21,000/- as having been paid when the propounded agreement recited an advance of Rs. 2,10,000/-.

2. The plaintiff in her cross-examination stated that the agreement was entered on the 7th day of the month when the recital showed that it was the 10th day of the April when it had been written.
3. After the parties had entered into an agreement, the time stipulated was 4 to 5 months according to the plaintiff's evidence, but, the actual recital was the stipulation of time by a period of nearly an year concluding on or before 08.04.2003.
4. The plaintiff's evidence was that Chand Ram and Partap Singh were present alongwith her at the time stipulated for execution of the sale deed, but, the evidence of PW-2 who was the son of Partap Singh was that his father died on 27.06.2002 and after his death he was himself occupying the father's post as Nambardar.

Each one of the contradictions brought at the trial were dealt with both by the trial Court and by the Appellate Court as well. Referring to Rs. 21,000/- as advance stated in the notice, the Court observed that it was clearly a typographical error and because the scribe had given evidence as PW3 stated that the amount of Rs. 2,10,000/- had been paid in his presence and that of the witness as the balance of sale consideration itself has been mentioned only referring to the amount of Rs. 2,10,000/- and therefore, the reference of Rs. 21,000/- ought to be, a mistake. About

the time stipulated as one year in the document, the evidence given as 4-5 months or about the date as 7th of the month in evidence when actually it was 10th April, the Court observed that these are minor discrepancies and the witness was given evidence several years after the agreement and therefore they were not significant. Even about the alleged presence of Partap Singh, before the sub-Registrar's office, when he had died in the year 2012, the Court observed that the plaintiff's evidence was in the context of the witnesses being present at the sub-Registrar's office and it must be taken as referring to the time when the agreement was written and it was an obvious error which could be seen by reading the whole evidence. On a substantial point of whether the agreement was true, the Court was convinced about the scribe Ved Parkash's evidence that the stamp papers were purchased from him, the signatures of parties entered in the Register maintained by him and the consideration was paid in his presence and all the witnesses. The non-examination of the witnesses themselves at the trial was explained by the plaintiff by reference to death of both of them, firstly through the evidence of his son DW-2 and another through production of his death certificate. One Balbir Singh was also stated to be present and he had given evidence to speak about the execution apart from the scribe. The argument now made is Balbir Singh's presence was not noted anywhere and the evidence must be, therefore, fabricated. Even regarding the evidence of Balbir Singh, I have no doubt in my mind that the trial Court and the Appellate Court had adequate material to render their conclusions that the agreement was true.

On the issue of readiness and willingness, the Court observed that the

defendant himself had admitted that the plaintiff had purchased previously a tractor from the defendant and the financial resources of the plaintiff was never put to challenge at the trial. The fact that the plaintiff had also recorded her own presence before the Registering Officer, as on 08.04.2003 was a further pointer to the readiness and willingness.

The Court has considered every issue of what was brought up as argument before me and have been dealt with properly. I find no substantial question of law as arising for consideration in the regular second appeal and dismiss the same as being without merits.

24.08.2015

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**(K.KANNAN)
JUDGE**