

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

RSA No.2349 of 2012 (O&M)

Date of Decision: 29.05.2015

Kuldip Kaur

.....Appellant

Versus

Samarjeet Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present:- Mr. Mehtab Singh Chicha, Advocate,
for appellant.

Mr. Naveen Sharma, Advocate,
for respondent.

SHEKHER DHAWAN, J

Present Regular Second Appeal against judgment and decree dated 23.01.2012 passed by District Judge, Jalandhar whereby judgment and decree dated 27.10.2010 passed by Court of Civil Judge (Senior Division), Jalandhar was set aside and appeal was accepted.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

3. Detailed facts of the case have already been recapitulated in the judgments of both the Courts below. However, relevant facts for the purpose of decision of appeal that plaintiff Samarjeet Kaur had filed suit for specific performance of agreement of sale on the basis of agreement dated 24.09.2003 with regard to Flat No.25, MIG Flats, Urban Estate, Phase-I,

Tehsil and District Jalandhar. As per plaintiff, defendant entered into agreement of sale dated 24.07.2003 in favour of plaintiff with regard to property in dispute for a total sale consideration of ₹5,50,000/-. ₹2,00,000/- was paid as earnest money. The target date for execution of sale deed was fixed to be 26.10.2004. On the date fixed plaintiff remained present in the office of Sub Registrar, Jalandhar along with balance sale consideration and registration charges etc. but the defendant did not turn up. Rather she told the plaintiff that 'No Objection Certificate' could not be obtained from PUDA authorities and as such the date for execution of registration of sale deed was extended to 26.10.2005 with mutual consent of the parties and additional payment of ₹1,00,000/- was made on the said date. Plaintiff again visited the office of Sub-Registrar, Jalandhar but defendant did not turn up and plaintiff got his presence marked in the office of Sub Registrar, Jalandhar by moving an affidavit. The plaintiff has always been ready and willing to perform her part of contract but the defendant has failed to perform her part and has not come forward and as such necessity of the suit.

4. Defendant contested the suit and denied the execution of the agreement and receipt of earnest money as well. However, defendant took the plea that suit property was allotted to her by PUDA authorities. The alleged agreement is forged and fabricated document. In fact plaintiff is a tenant on the portion of the suit property and ejectment order has already been passed against her by Rent Controller and prayed that suit be dismissed.

5. On these facts, Court of first instance settled the following issues:

1. Whether the plaintiff is entitled to the possession by way of specific performance of agreement dated

24.07.2003? OPP

2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP.
3. Whether the suit is not maintainable in the present form? OPD.
4. Whether the plaintiff has no locus-standi to file the present suit? OPD.
5. Whether the plaintiff has no cause of action to file the present suit? OPD
6. Relief.

6. Court of first instance after recording of evidence and appreciation thereof returned the findings that plaintiff has not been able to prove the execution of the agreement so he is not entitled to seek specific performance thereof. Plaintiff filed appeal before First Appellate Court and the same was accepted and findings recorded by Court of first instance were reversed and decreed the suit for specific performance of above said agreement, hence Regular Second Appeal before this Court.

7. In this case following substantial question of law is involved and same settled for decision of appeal:

1. Whether Courts below mis-appreciated the evidence available on file which resulted into perverse finding?

8. While arguing on this point Mr. Mehtab Singh Chicha, learned counsel for appellant-defendant took the plea that Court of first appeal has misread the evidence because plaintiff herself had not stepped into the witness box rather her power of attorney holder Mr. Vijay Kumar appeared as PW-1 but he was not knowing about the facts of the case. Apart from that plaintiff had examined PW-2 Gurmail Singh and PW-3 Sameer Kalra but they had not supported the case as they deposed that they had signed the agreement. Later on FIR was got registered against plaintiff and she was

declared Proclaimed Offender. PW-5 HC Bhagwant Singh was unable to identify the signatures even. The original agreement was never placed on file. Defendant is an old lady and she could not appear before the Court because of her age factor but she appeared through attorney holder only.

9. While arguing on this point Mr. Naveen Sharma learned counsel for defendant-plaintiff took the plea that appeal was filed by defendant Kuldeep Kaur through her General Power of Attorney on 30.04.2012 whereas she had died earlier and as such appeal was not maintainable.

10. As regards to the non-production of original agreement before the Courts below, the original agreement was with the police in a criminal case. Plaintiff herself had appeared in person and not through attorney. Witnesses examined by the plaintiff duly proved the agreement and there was no reason to disbelieve them and Court of first Appeal had rightly appreciated their testimony.

11. Having considered the submissions made by learned counsel for both the parties this Court is of the considered view that in fact appellant Kuldeep Kaur had not put her appearance before Court of first instance rather her General Power of Attorney holder appeared on her behalf. It was for the defendant to appear in person and to admit or deny her signature and for execution of sale. In fact her husband Jarnail Singh appeared as attorney and he had simply taken the plea that he was not present at the time of execution of agreement of sale Exhibit P-8. Defendant-appellant had come with the plea that the agreement is forged one but there was absolutely no evidence led by defendant to prove the said fact. It is settled proposition of law that plea of fraud must be proved strictly as charge of fraud to be

proved in a criminal case beyond any doubt but that has not been done in this case. It is very easy to allege a fraud but the law requires that the allegations of fraud must be proved strictly but that has not been done in this case. Appellant has been simply relying that one FIR was got registered against the plaintiff for committing forgery. It had come on the file that the matter was investigated by the police and thereafter submitted cancellation report against the same FIR. Hence, registration of FIR loses any significance.

12. Court of first instance also discussed in detail report Exhibit D-8 submitted by Deputy Director that the said report nowhere mentions that the document Exhibit D-8 was not bearing the signature of defendant-Kuldip Kaur. But to the contrary plaintiff herself appeared in the witness box to prove the due execution of agreement. Attesting witnesses of the agreement also proved the due execution of agreement and also deposed that they had signed as attesting witness in the presence of each other. The payment of earnest money was also made in their presence. On the basis of such evidence, the Court of first appeal had rightly placed reliance and reference and reversed the findings recorded by Court of first instance.

13. In view of the above the above substantial question of law answered against the appellant-defendant and in favour of respondent-plaintiff.

14. Resultantly, appeal stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 29, 2015

msd