

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

Regular Second Appeal No.5024 of 2011 (O&M)

Date of decision: 15.7.2015

Sharda and another

... Appellants

Versus

Manjit Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Aakash Singla, Advocate,
for the appellants.

Mr.Ashish Gupta, Advocate,
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

Heard the learned counsel for the parties at some length and
perused the record.

I have no reason to disagree with the reasoning ascribed in the
well founded judgment of the learned District Judge, Faridkot passed on 3rd
August, 2011 decreeing the suit for possession by way of specific
performance of an agreement to sell dated 4th February, 2006 regarding land
measuring 200 square yards as described in the head note of the plaint.
Learned District Judge, Faridkot has for the best of reasons reversed the
findings of the learned trial Court recorded in his judgment dated 28th April,

2009 while dismissing the suit. The case hinges on a slender but substantial argument but before that a few necessary facts are sketched.

The agreement of sale is dated 4th February, 2006 with the wife of late Ram Pal and her son agreeing to sell a plot of 200 square yards @ ₹ 480/- per square yard. The target date fixed for registration of the sale deed was 5th June, 2006. The earnest money of ₹ 50,000/- was said to have been passed to the intending vendor. Both the parties conceded before the court of first appeal that there is no documentary evidence led either by the plaintiff or the defendants to support their respective contentions that on 5th June, 2006, they were present in the office of the Sub-Registrar. It has been determined on facts that mutation in favour of the defendants was sanctioned by the Patwari on 27th October, 2006 [see testimony of Rajinder Singh Patwari]. There was a specific recital in the agreement of sale that possession shall be handed over at the time of execution of the sale deed.

The question which arose before the learned District Judge at Faridkot is that so long the person is not declared as owner in the revenue record, his right to execute the sale deed becomes questionable. Rajinder Singh Patwari deposed that without the mutation entry, the sale deeds are not given effect to by the authorities in the office of the Sub-Registrar when they are approached for execution of conveyance deeds. The Court reasoned that when mutation of inheritance was sanctioned on 27th October, 2006 after the death of the husband and father of the defendants, the question of execution of sale deed before the target date does not arise. The learned District Judge, Faridkot disbelieved the version of the defendants that they appeared before the Sub-Registrar on 5th June, 2006 for getting the sale deed

registered since the averment was self-contradictory as intending vendors had not become owners of the property by then. It may be clarified that they could enter into a sale agreement in advance of the mutation but on the target date, the mutation of inheritance had not been sanctioned on the death of Ram Pal husband of defendant # 1-Sharda and father of Rajesh Kumar defendant # 2. It can then be safely assumed that the plaintiff was ready and willing to execute her part of the contract when the mutation was sanctioned only a few months after the date fixed by consent being the appointed day for registration of the sale deed in the office of Sub-Registrar. The suit was filed on 22nd August, 2006 without loss of time and merely because prices had risen meanwhile is not a valid ground to deny the relief of possession by way of specific performance. The discretionary jurisdiction has to be exercised equitably. Learned District Judge properly applied the law laid down by the Supreme Court in **Laxman Tatyaba Kankate and another v. Smt.Taramati Harishchandra Dhatrak**; 2010 (7) SCC 717. On these premises, learned District Judge, Faridkot decreed the suit. The judicial discretion exercised by the court of first appeal on a fair and proper reading of the evidence cannot be said to be afflicted by an error of fact or error of law and is not open to interference in the present second appeal. The Supreme Court in **Santosh Hazari v. Purushottam Tiwari (D) through LR**s AIR 2001 SC 965 has guided courts that a mere error of law or error of fact is not open to interference except when such an error raises a substantial question of law. Mere errors of law and fact are ignorable within this jurisdiction so long as substantial justice has been handed down judiciously. I am most certainly not inclined to interfere in this appeal and

would endorse the view of the Court *a quo* on the issues involved as sound in law and facts established on record. No substantial question of law arises in this appeal for an admission in regular hearing.

Accordingly, the appeal is ordered to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

July 15, 2015
Paritosh Kumar