

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

**Regular Second Appeal No.4293 of 2012 (O&M)
Date of Decision: January 29, 2015.**

Jasbir Kaur

.....APPELLANT(s).

VERSUS

Balwant Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. A.S. Jattana, Advocate
for the appellant (s).

Mr. G.S. Punia, Senior Advocate with
Ms. Mandeep Kaur Kahlon, Advocate
for the respondent.

SURINDER GUPTA, J.

This is regular second appeal against the concurrent finding of Courts below whereby the suit filed by respondent-plaintiff was decreed for possession by way of specific performance of agreement to sell dated 3.4.2002.

Briefly stated, the matrix of the facts culminating into commencement of the litigation between the parties as emanate from the record are that respondent-plaintiff on the basis of agreement to sell dated 3.4.2002, sought the specific performance of the agreement with regard to sale of the land measuring 19 kanals 8 marlas as fully described in the head note of the plaint. As per the respondent-plaintiff, appellant-defendant agreed to sell the aforesaid land for ₹4,87,000 and received ₹4 lacs as earnest

money at the time of execution of the agreement. The date for execution of

the sale deed was fixed as within 15 days of the termination of litigation between the parties. The respondent-plaintiff had filed appeal in the Court of Commissioner, Patiala Division, Patiala against sanctioning of mutation regarding the land in dispute in favour of appellant. He withdrew that appeal, which was dismissed as withdrawn on 09.04.2002. Thereafter, he requested the appellant-defendant to execute the sale deed under the agreement on receipt of balance sale consideration. The appellant-defendant got the stamp papers purchased and the sale deed was written on 02.05.2002 but could not be presented before Sub Registrar, Dehlon on that day as he was not available. The parties agreed to get the sale deed registered on 06.05.2002, which was the next working day for the registration of the documents. On 06.05.2002, the appellant-defendant did not turn up and later refused to get the sale deed registered.

In written statement, the appellant-defendant contested and controverted the averments of the plaintiff, alleging that she did not execute any agreement to sell dated 3.4.2002 and did not receive an amount of ₹4 lacs as earnest money. The agreement dated 03.04.2002 was dubbed as forged and fabricated document and not bearing the signature of appellant-defendant. She challenged the agreement with the plea(s) as follows:-

- (i) No sale consideration was received by her at the time of agreement.
- (ii) It does not bear her signatures as she signs in Punjabi and signatures on agreement are in English.
- (iii) The land is situated at village Khatra and the parties are also residents of that village while the agreement was executed at village Maloud despite the fact that there are petition writers at Dehlon and Ludhiana. The

witness of the agreement Babu Singh was resident of village Ramgarh Sardaran and Avtar Singh of village Jhammat. There was no witness from village Khatra.

(iv) Babu Singh, one of the witnesses, was inimical to her and also remotely related to her. He in connivance with respondent-plaintiff and other witnesses, forged the agreement.

(v) The sale deed dated 2.5.2002 was also got drafted by respondent-plaintiff in connivance with Balwant Singh and his son Baljeet Singh.

(vi) The possession of the land is still with the appellant.

(vii) In the event of sale deed having been executed by appellant, the respondent could approach the Tehsildar/Joint sub Registrar for registration of the document under the provisions of Indian Registration Act.

Both the Courts below recorded concurrent finding in favour of respondent-plaintiff that the appellant-defendant executed the agreement in question in favour of respondent-plaintiff and also received ₹4 lacs as earnest money. The plea of the appellant that she signs in Punjabi language was discarded as on the power of attorney, which she had executed and got registered in favour of Babu Singh, her signatures were in English.

Learned counsel for the appellant has put forth three arguments while assailing the concurrent finding of the Courts below, as follows:-

(i) The Court of Additional Civil Judge (Senior Division), Ludhiana has not framed proper issues, arising from the pleadings of the parties. The appellant-defendant had denied the execution of the agreement and the signatures on it and no issue was framed as to whether agreement to sell dated 3.4.2002 was executed by the defendant and it bears her signatures and

the findings were also not recorded on each issue separately.

(ii) The appellant-defendant was not owner of the suit land at the time of agreement as the litigation with regard to the land was pending before the revenue Courts, as such, she was not competent to enter into an agreement.

(iii) The land is situated at village Khatra Chuharam, while the witnesses of the agreement belong to other villages and the agreement was also scribed at village Maloud instead of at Dehlon or Ludhiana, where the deed writers are available.

I have carefully considered the above submissions of learned counsel for the appellant but find no substance therein.

The first arguments of learned counsel for the appellant that proper issues have not been framed is without any substance because issue No.1 framed in this case is “*Whether the plaintiff is entitled to possession by way of specific performance of the agreement dated 03.04.2002*”.

The above is a comprehensive issue and while deciding this issue, the Courts below have looked into this aspect as to whether the agreement dated 03.04.2002 was proved to be a genuine and valid agreement executed by appellant before allowing relief of specific performance. All the plea raised by the appellant-defendant challenging the legality and validity of this document were duly considered by both the Courts below including the one that she signs in Punjabi and not in English. The findings were also recorded on all the issues and no issue was left undecided by the Additional Civil Judge (Senior Division), Ludhiana. The mere fact that he had taken all the issues together for decision, is not a fact which effect the legality of the judgment in any manner. Even otherwise, issue No.2 to 8 were legal issues

and after detailed discussion of entire evidence on record, finding on each issue was specifically recorded.

The second argument advanced by learned counsel for the appellant-defendant regarding title of the appellant over the suit property is also without any basis, as it emerges from the perusal of the record that mutation of the suit land was decided in favour of the appellant-defendant and respondent-plaintiff had challenged that mutation by filing appeal before the Commissioner, Patiala Division, Patiala. Firstly, the dispute regarding mutation has nothing to do with the title of a person over the suit land. Secondly, in this case, even mutation was sanctioned in favour of the appellant-defendant. It emanates from the above facts that the parties settled their dispute out of Court and under the settlement, appellant-defendant entered into the agreement to sell the suit land. She also purchased the stamp paper and executed the sale deed. The same, however, could not be got registered on the day it was executed due to non-availability of Tehsildar/Joint Sub Registrar, Dehlon. On the next working day i.e. 6.5.2002, the appellant-defendant refused to get the sale deed registered. All this indicates willingness of appellant-defendant to sell the suit land to respondent-plaintiff till 02.05.2002. She was possessing the title of the suit land and that is why she entered into agreement to sell the same and the respondent-plaintiff agreed to purchase it.

Third argument of learned counsel for the appellant-defendant is also without any basis. Even if, Babu Singh was resident of other village, he was a person of confidence of appellant-defendant as she earlier appointed him as her power of attorney. Even otherwise, it transpires from the facts and circumstances discussed above that the agreement in question was the

outcome of efforts of the parties to settle the dispute and the litigation. Both the parties to the agreement were not strangers but known to each other and were in litigation. The fact that witnesses of the agreement were of some other village, in no manner, affect the genuineness and validity of the agreement.

On perusal of paper book and judgments of the Courts below, I find no legal or factual infirmity therein, calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

January 29, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE