

RSA No.4894 of 2012 (O&M)

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

RSA No.4894 of 2012 (O&M)

Date of Decision: December 09, 2015

Smt. Chameli Devi

...Appellant

Versus

Mukesh Sharma

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sanjay Mittal, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Narnaul, dated 09.03.2010, whereby, the suit for possession by way of specific performance of the agreement to sell dated 10.10.2002 for the sale of 11 square yards shop for a total consideration of ₹90,000/-, out of which ₹80,000/- was paid as earnest money on the date of the execution of agreement to sell stands decreed, appeal against which preferred by the appellant-defendant has been dismissed by the District Judge, Narnaul, on 05.09.2012.

It is the contention of the learned counsel for the appellant that the respondent-plaintiff has not been able to prove the due execution of the agreement to sell dated 10.10.2002. He

contends that the agreement to sell actually was not executed by the appellant, rather the same is a forged and fabricated document and shrouded with suspicious circumstances. In support of this contention, he places reliance upon the fact that as per the assertion of the respondent-plaintiff, the shop was in possession of Ishwar Singh who was a tenant and if he was a tenant of the appellant-defendant, the rent note dated 16.09.2002 should have been in her possession and could not have been produced by the respondent-plaintiff. His further contention is that it is the stand of the respondent-plaintiff that the possession of the house was handed over to him as a perspective vendee by the tenant-Ishwar Singh on 01.08.2003 which further fortifies the suspicion with regard to the execution of the agreement to sell. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain as no such agreement to sell dated 10.10.2002 was executed by the appellant-defendant nor was any sale consideration in the form of earnest money amounting to ₹80,000/- as asserted, received by her. He, accordingly, prays that the present appeal may be allowed and the judgments and decree passed by the Courts below be set aside and the suit of the respondent-plaintiff dismissed.

I have considered the submissions made by the learned counsel for the appellant and with his assistance have gone through the impugned judgments but cannot accept the same.

The assertion of the counsel for the appellant that the agreement to sell has not been executed by the appellant-defendant, cannot be accepted as the respondent-plaintiff has been able to produce cogent and convincing evidence in the form of attesting witnesses, namely, Dinesh Kumar son of Sunder Lal (PW-6) and Dinesh Kumar son of Amar Singh (PW-7) and Jai Parkash Bhardwaj (PW-5) the deed-writer. The advocate has also appeared as witness who have proved the appearance of the respondent-plaintiff on 31.03.2003 before the Sub-Registrar, on which date, the agreement to sell should have been executed as the date fixed for execution of the sale deed was 30.03.2003 which was Sunday and thereafter, legal notices dated 19.04.2003 and 20.06.2003 were also served upon the appellant which notices have also been proved by Sh.Vijay Kumar, Advocate, who had drafted the same. All these clearly establish the execution of the agreement to sell dated 10.10.2002 and the ready and willingness on the part of the respondent-plaintiff to perform his part of the agreement.

The assertion of the counsel for the appellant that there was suspicious circumstances with regard to the execution of the agreement to sell dated 10.10.2002, suffice it to say that the reliance for making such an assertion by the counsel for the appellant is production of the rent note (Ex.P-9) and the handing over of the possession of the shop by the tenant Shri Ishwar Singh to the

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respondent-plaintiff cannot be of such an effect that would indicate that the agreement to sell was not as per the requirement of law especially when its execution has been duly proved.

A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

CM No.13627-C of 2012

In view of the order passed in the main appeal, the present application for staying the operation of the impugned judgments and decree passed by the Courts below during the pendency of the appeal, has become infructuous.

Disposed of as such.

December 09, 2015*Harish***(AUGUSTINE GEORGE MASIH)
JUDGE**