

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1304 of 2013 (O&M)

Date of Decision: January 28, 2015

Smt.Mukesh Devi

...Appellant

Versus

Bimla Devi

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Ms.Seema Pasricha, Advocate,
for the appellant.

Mr.Sandeep Verma, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

CM No.680-C of 2015

Comprehensive affidavit, in view of the order dated 18.11.2014
passed by this Court, is taken on record.

CM stands disposed of.

CM No.3496-C of 2013

On perusal of the comprehensive affidavit, which is taken on
record today, it is born out that the delay in filing the appeal was not
intentional nor deliberate.

For the reasons mentioned in the application, which is
supported by an affidavit, the delay of 519 days in filing the appeal is
condoned.

CM stands disposed of.

RSA No.1304 of 2013

The present Regular Second Appeal at the instance of the appellant-defendant against the judgment and decree of the trial Court, whereby the suit for specific performance of full and final payment of agreement to sell dated 25.5.2005 executed by the appellant-defendant in favour of the respondent-plaintiff for selling a built up house measuring 200 sq.yards, situated in residential colony, Bharat Nagar near Kabri Road, Panipat, had been decreed and the appellant-defendant has been directed to execute and register the sale deed in favour of the respondent-plaintiff in view of the fact that full and final payment has already been paid at the time of the execution of the agreement to sell, failing which the respondent-plaintiff has been given liberty to get the sale deed registered through the process of the Court.

Ms.Seema Pasricha, learned counsel appearing for the appellant-defendant, in support of her appeal, submits that both the Courts below have committed an illegality and perversity in misreading the contents of the agreement to sell dated 25.5.2005, for, since the possession was alleged to have been handed over to the respondent-plaintiff, it required registration. She further submits that since the execution of the agreement to sell was denied by the appellant-defendant, the respondent-plaintiff, while closing the evidence in affirmative, did not examine the Handwriting and Documents Expert and without reserving the right in rebuttal, examined the Expert in rebuttal evidence and, therefore, the report of the Handwriting Expert merely having been tendered and the Expert having not been examined could not be read into evidence. She further submits that the

appellant-defendant had taken the plea that the property had already been sold to the extent of 100 sq.yards.

Mr.Sandeep Verma, learned counsel appearing for the respondent-plaintiff, in support of his case, submitted that in order to prove the execution of the agreement to sell, the respondent-plaintiff has examined Ranbir Singh, attesting witness and Kartar Singh, scribe of the agreement to sell, who proved not only the execution of the agreement to sell, but also proved the payment of total consideration of ₹1,80,000/- and the appellant-defendant has failed to put any specific question to the aforementioned witnesses with regard to the handing over the possession of the suit property, much less, the execution of the agreement and, therefore, both the Courts below have rendered a finding of fact and law and, therefore, need not be set-aside and liable to be affirmed.

I have heard the learned counsel for the parties and appraised the judgments and decrees of the Courts below with their able assistance and is of the view that the appeal is liable to be dismissed.

It has been held by this Court in **Ram Kishan and another Versus Bijender Mann alias Vijender Mann and others, 2013(2) CCC 188** that in a suit for specific performance, even if the possession has been handed over to the vendee, the agreement to sell is not required to be registered. Both the Courts below have discarded the report of the Handwriting and Documents Expert as there was no issue in this regard. Be that as it may, the fact remains that the appellant-defendant did not cross-examine the attesting witness, much less, scribe to the agreement to sell with regard to the execution of the agreement to sell and as well as with

regard to the contents thereof, i.e., handing over the possession of the suit property to the respondent-plaintiff.

The appellant-defendant has failed to prove the specific averment taken with regard to the suit property having been sold by not placing on record any sale deed, much less, by examining any vendee. Therefore, the plea that the property had been sold during the pendency of the suit is hereby repelled. Both the Courts below have found that the respondent-plaintiff was ready and willing to perform her part of the contract, much less, proved the execution of the agreement to sell and as well as the passing of the entire sale consideration. The finding rendered by both the Courts below is based on the appreciation of the facts and law. There is no illegality and perversity in the finding recorded by both the Courts below. No substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

There shall be no order as to costs.

January 28, 2015
ramesh

(AMIT RAWAL)
JUDGE