

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

**Regular Second Appeal No.1243 of 2015 (O&M)
Date of decision: 13.08.2015**

Umlesh and others

.....Appellants

Versus

Parwati and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vikram Singh, Advocate,
for the appellants.

Ritu Bahri, J.

Defendant Nos.1 to 3-appellants have come up in regular second appeal against the judgment of reversal dated 07.11.2014 passed by the Additional District Judge, Palwal, whereby appeal filed by the plaintiff-respondent No.1 against the judgment and decree dated 17.03.2012 passed by the Additional Civil Judge (Senior Division), Palwal, has been partly allowed and suit of the plaintiff has been decreed to the effect that she was entitled to refund of Rs.2,20,000/- as earnest money, which was paid to the defendants, along with interest at the rate of 6% per annum from the date of institution of the suit till its realisation.

On 15.05.2001, Smt. Parwati-plaintiff (respondent No.1 herein) had entered into an agreement to sell the suit land for a sale consideration of Rs.2,20,000/- with Suneel Kumar-husband of defendant No.1-Umlesh, who was owner of the suit land along with her sister namely Bimla, Urmila and Leela. Suneel Kumar, being owner and general power of attorney of Bimla,

Urnila and Leela, had received a sum of Rs.1,92,000/- as earnest money on 15.05.2001. He also received a sum of Rs.47,800/- on 19.02.2004. In total, he had received Rs.1,92,000/- as earnest money from the plaintiff and executed a receipt to that effect. Sale deed was agreed to be executed and registered on 15.05.2003. Thereafter, the date for execution and registration of the sale deed was extended to 14.05.2004. On the stipulated date, the plaintiff remained present in the office of Sub Registrar, Palwal along with balance sale consideration and expenses for stamps and registration fee etc., but Suneel Kumar did not turn up for execution and registration of the sale deed. After the death of aforesaid Suneel Kumar, defendants were legally bound to perform their part of the contract being his legal heirs. In the month of December, 2005, the plaintiff came to know that the defendants were going to sell the suit land to some other person. Hence, the present suit.

Upon notice, defendant Nos. 1 and 2 filed separate written statement and took preliminary objections with regard to maintainability, locus standi, cause of action, suppression of material facts and non joinder of necessary parties. Execution of the agreement to sell and receipt of earnest money by Suneel Kumar was denied.

In his separate written statement, defendant No.3 took similar stand as was taken by defendant Nos.1 and 2.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the defendant entered into an agreement to sell the suit property with the plaintiff? OPP
2. Whether the plaintiff is entitled to injunction as a consequential relief of declaration? OPP
3. Whether the suit of the plaintiff is not maintainable in the

present for and is time barred? OPD

4. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD

5. Whether the plaintiff has concealed true and material facts from the Court? OPD

6. Relief.

The trial Court examined the documents i.e. agreement to sell (Ex.P1), receipt(s) (Ex.P2 and Ex.P3) in which details of the property was clearly mentioned. Power of attorney on behalf of defendant Nos. 4 to 6 i.e. Bimla, Urmila and Smt. Leela daughter of Durga Parshad, which was given in favour of deceased-Suneel Kumar, was proved on record as Ex.P6. All the above said documents were duly proved before the trial Court. The plaintiff-respondent No.1 had appeared before the Sub Registrar on 17.05.2004 to perform her part of the contract because 15.05.2004 and 16.05.2004 were holidays in the revenue department. Plaintiff got her presence marked vide Ex.P7. The suit was, thereafter, filed on 23.12.2005 within limitation. The trial Court dismissed the suit. However, the lower appellate Court partly accepted the appeal and held that the plaintiff-respondent No.1 was entitled to recover the amount of Rs. 2,20,000/- along with interest. While allowing the appeal, it was observed that the documents i.e. agreement to sell (Ex.P1), payment of earnest money (Ex.P2 and Ex.P2), General Power of Attorney (Ex.P6) and presence of plaintiff before the Sub Registrar (Ex.P7) have been duly proved on record. It was held that the plaintiff was always ready and willing to perform her part of the contract. However, keeping in view the fact that after the death of Suneel Kumar (owner of the property), the defendants-appellants being his legal heirs

by the lower appellate Court as sufficient ground for decreeing the suit of the plaintiff for recovery of Rs.2,20,000/- with interest.

The plaintiff-respondent No.1 had appeared before the Sub Registrar on 14.05.2004 and the suit was filed after the gap of almost 1½ years. The prices of the property were due to escalate and after the death of Suneel Kumar, on account of hardship, the defendants-appellants were not willing to perform their part of the contract. The execution of the agreement in question was duly proved by Devi Ram Saini, Deed Writer (PW-4). As per his statement, agreement to sell (Ex.P1) and receipt dated 15.05.2001 (Ex.P2) were got typed by him from his typist on the directions of the parties. After understanding the same, all the parties concerned put their thumb impressions/signatures thereon. Similarly, receipt (Ex.P3) was also typed by him, which is registered at serial No.22 dated 19.02.2004 in his register. This document was also signed by the parties and Suneel Kumar had received further earnest money of Rs.47,800/- in his presence. Hoob Lal and Suresh Chander, attesting witnesses of the writing dated 14.05.2001 (Ex.P4) and receipt dated 19.02.2004 (Ex.P3) were examined as PW-1 and PW-2 respectively. As per the deposition of Suresh Chander (PW-2), Suneel Kumar-deceased had signed the writing (Ex.P4) on the back of agreement dated 15.05.2001 (Ex.P1) for extension of date. Thereafter, Suneel Kumar put his thumb impression thereon along with the plaintiff and the attesting witness namely Tula Ram. Witnesses of the plaintiff have duly proved that Suneel Kumar had received Rs. 1,92,000/- as earnest money in the presence of other witness namely Kamlesh and he then thumb marked the agreement (Ex.P1).

The lower appellate Court, after perusing the above said evidence,

returned a finding that all the documents i.e. Ex.P1 to Ex.P3 have been duly

proved by the plaintiff and on the stipulated date, she had appeared before the Sub Registrar as per Ex.P7.

After going through the impugned judgment passed by lower appellate Court, this Court is of the view that pursuant to the agreement to sell (Ex.P1), Suneel Kumar, predecessor-in-interest of the defendants-appellants, had received Rs.1,92,000/- as earnest money from the plaintiff-respondent No.1 and thereafter, he failed to perform his part of the contract. Even after the death of aforesaid Suneel Kumar, the appellants being his legal heirs, have failed to execute the sale deed in her favour. The suit of the plaintiff-respondent No.1 has been rightly decreed by the lower appellate Court. No illegality, much less perversity, has been found in the impugned judgment.

No substantial question of law arises for consideration.

Dismissed.

13.08.2015

ajp

(RITU BAHRI)
JUDGE