

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

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Regular Second Appeal No.3849 of 2015

Date of Decision: August 14, 2015

Smt. Kaushalya Devi

...Appellant

Versus

Gurudev Sharma

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. O.P. Sharma, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgments and decree passed by the Courts below, where the suit filed by the respondent-plaintiff for possession by way of specific performance of agreement to sell dated 15.04.2004 qua House No.46, Ward No.10, total measuring 120 square yards situated within the Municipal Area of Faridabad (old) for a total sale consideration of ₹4,00,000/-, stands decreed as the appellant-defendant has received an amount of ₹3,00,000/- towards earnest money and executed a receipt dated 15.04.2004.

It is the contention of the counsel for the appellant-defendant that the Courts below have proceeded on the assumption by drawing adverse inference from the fact that the son of the appellant-defendant namely Sandeep Kumar, who was the attesting witness of the agreement to sell along with her husband Shiv Dutt Sharma (who had expired) had not appeared before the Court to deny his signatures on the agreement to sell dated 15.04.2004 Exhibit P-1. He contends that the presumption so drawn cannot be accepted specially when the appellant-defendant has disputed the

execution of the said agreement. He further contends that the onus was upon the respondent-plaintiff to prove the execution of the agreement to sell dated 15.04.2004, which has not been discharged. He thus contends that the impugned judgments and decree of the Courts below deserve to be set aside and the present appeal allowed.

Having considered the submissions made by the counsel for the appellant-defendant and on going through the records of the case, I am of the considered view that the arguments raised by the counsel for the appellant-defendant cannot be accepted.

As is apparent from the judgments passed by the Court below, the respondent-plaintiff has proved the agreement to sell dated 15.04.2004 by stepping into the witness box himself as PW-1. PW-2 Jugal Kishore, who was the scribe of the agreement as well as the receipt, has specifically deposed that both these documents were scribed by him as per the instructions of the respondent-plaintiff as well as the appellant-defendant and both the parties after admitting the contents of the same to be true, affixed their respective signatures and thumb impression. The agreement to sell Exhibit P-1 as also the receipt Exhibit P-2 both dated 15.04.2004 have been duly proved.

The appellant-defendant has asserted that the agreement to sell was a fraud committed on her but she has not been able to produce any evidence in support of this assertion. The best evidence available to her was to produce her son namely Sandeep Kumar, who was one of the attesting witnesses to the agreement to sell dated 15.04.2004 and the receipt Exhibit P-2 of the same date. She did not produce him in the witness box. There being no evidence supporting bald assertion of the appellant-defendant, the

findings recorded by the Courts below, cannot be faulted, which are on due appreciation of the pleadings and the evidence on record. There being no merit in the present appeal, the same stands dismissed, more so, when there is no substantial question of law, which arises consideration of this Court.

August 14, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**