

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A. No. 2784 of 2014 (O&M)

Date of Decision:- 21.05.2015

Neelam Rani

.....Appellant

Versus

Suman Bharti

.....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present: Mr. H.S. Bhullar, Advocate,
for the appellant.

SHEKHER DHAWAN, J.

Present Regular Second Appeal against the concurrent findings of both the Courts below in a suit for possession by way of specific performance of agreement of sale.

2. For the sake of convenience, the parties are being referred to as per their status before the Court of first instance.

3. The detailed facts of the case have already been recaptured in the judgments of both the Courts below. However, relevant facts for the purpose of decision of present Regular Second Appeal that plaintiff

Suman Bharti filed suit for possession by way of specific performance of agreement of sale dated 26.03.2004. As per plaintiff, the agreement of sale was duly executed on 26.03.2004 and a sum of ₹1,25,000/- was received as earnest money. The target date for execution of sale deed was fixed on or before 30.08.2004. On the date fixed, the plaintiff remained present in the office of Sub-Registrar along with balance sale consideration but the defendant never turned up. Legal notice was issued but no effect and as such the suit before the Court of first instance.

4. Defendant contested the suit taking the plea that she was in need of money of ₹70,000/ and she had actually received the amount from plaintiff but she had never agreed for sale of house. No agreement of sale was executed and no earnest money was ever received. Moreover, the market value of the property in question is more than ₹25,00,000/-. No legal notice was received by her, as there was no agreement of sale of house and there is no question of specific performance.

5. On these circumstances, the following issues were settled by the Court of first instance:-

- “1 Whether the plaintiff is entitled to a decree for possessions by way of specific performance on the ground mentioned in the plaint as alleged? OPP
- 2) Whether the suit is not maintainable in the present form...? OPD
- 3) Whether the plaintiff has no locus-standi and cause of action to file the present suit? ...OPD
- 4) Whether the plaintiff is estopped from filing the present suit by his own act and conduct? ... OPD
5. Whether the plaintiff has not come to the Court with clean

hands, if so its effect?.....OPD

6. Relief. “

6. The defendant led her respective evidence. The Court of first instance after considering the material and evidence available on file, decreed the suit of the plaintiff for specific performance of agreement of sale dated 26.03.2004. Defendant preferred the appeal but remained unsuccessful and as such the present appeal before this Court.

7. At the time of arguments, Mr. H.S. Bhullar, learned counsel for the appellant took the plea that plaintiff had never executed any agreement of sale and there was no question of execution. More so, the value of the property was more than ₹25,00,000/-. The alleged agreement was result of fraud and misrepresentation. The circumstances establish the plea of fraud because husband of the plaintiff is practicing lawyer. The agreement was allegedly executed fraudulently and husband of the plaintiff was witness and one unknown person was the witness. The said signatures were of the defendant but the Courts below did not appreciate the evidence available on file.

8. Having considered the submissions made by learned counsel for the appellant and perusal of the record, this Court is of the considered view that the matter in controversy is simple that plaintiff had come with the plea that defendant executed agreement of sale dated 26.03.2004 and received earnest money. Defendant has denied the execution of the same, admitting that she had received the amount from the plaintiff but that was not as earnest money. Rather the same on account of financial necessity.

She was victim of fraud. It is a settled principle of law that fraud is

required to be proved just like a charge in a criminal case. It is very easy to allege fraud but the requirement of law is that the fraud must be proved strictly and that has not been done in the present case. In view of the stand that the witness of the agreement is husband and one unknown person does not make out a case that the agreement was bogus and result of fraud. Both the Courts below have already appreciated the oral and documentary evidence and returned that specific findings of facts that agreement was duly executed and earnest money was received. If at all, the defendant was the victim of fraud, the matter was to be reported to the police but in the present case no criminal complaint was filed by defendant. Merely taking the plea that agreement of sale was result of fraud does not make it a case of fraud specially when the execution of agreement has been duly proved as per law.

9. In view of the above, there is no substantial question of law involved in the case and concurrent finding of facts have been recorded by the Courts below. There are no grounds to interfere in the said findings by way of present Regular Second Appeal. Hence, the present Regular Second Appeal is without any merit and the same stands dismissed.

May 21, 2015
naresh.k

(SHEKHER DHAWAN)
Judge