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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.5170 of 2014 (O&M)
Date of Decision: 20.10.2015

HAWA SINGH

.....Appellant

Vs

SMT. KRISHNA DEVI

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

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?*

RAJ MOHAN SINGH, J.(Oral)

[1]. Plaintiff filed a suit for possession by way of specific performance of contract dated 27.03.2006.

[2]. Vide the aforesaid contract/agreement to sell 14 *Kanals* of land was agreed to be sold for a total sale consideration of Rs.2,00,000/-. An earnest amount to the tune of Rs.1,86,000/- was paid and target date for execution of the sale deed was fixed as 15.09.2006.

[3]. Plaintiff got her presence marked before the Sub-Registrar, Narnaul in order to show readiness and willingness on her part, but the defendant failed to attend the office of Sub-Registrar, Narnaul for the purposes of execution of sale deed.

[4]. In the written statement, plea of denial has been raised to the effect that defendant has not received any amount in pursuant to agreement to sell. The plea of loan has been taken to the effect that on 05.05.1999, the defendant took a loan of Rs.10,000/- from the plaintiff and periodical interest has been calculated.

[5]. The plaintiff in her evidence got Singh Raj, Scribe examined as PW-1, who has deposed before the Court that he has scribed the document in question with reference to necessary details. Attesting witnesses namely Umed Singh and Babu Lal have also been examined as PW-2 and PW-3 respectively, who have also deposed in the context of proving agreement to sell in question.

[6]. Since the defendant has denied the factum of execution of agreement to sell, therefore, plaintiff in all abundant caution got examined Shamsher Singh Handwriting Expert as PW-4, whose report has testified the factum of signature of the defendant appearing on the agreement to sell. The oral testimonies of the witnesses have been duly supplemented by the documents viz. agreement to sell Ex.P1, affidavit Ex.P-2 showing attendance of the plaintiff before the office of Sub-Registrar, Narnaul, Ex.P-3 *Jamabandi* for the year 2000-2001 and the report of Expert as Ex.P4/A. Plaintiff also got examined herself as PW-5, besides examining Ram Chander from the office of Sub-Registrar as PW-6.

[7]. On the other hand, defendant only examined himself as DW-1, besides examining Singh Raj, Deed Writer as DW-2.

[8]. The suit was filed on 28.09.2006 after the target date i.e. 15.09.2006 which itself shows that suit was filed promptly, evidencing the readiness and willingness on the part of the plaintiff.

[9]. Learned counsel for the appellant has admitted that even though in the written statement the defendant has not taken up specific plea of previous agreements dated 04.04.1999, 04.05.2002 and 04.03.2003. All these agreements have come during the course of arguments and the same are sufficient to show that loan was taken in the year 1999 and there was periodical calculation thereupon and on every occasion plaintiff got revival of agreement in order to secure loan instance.

[10]. There is no such plea taken in the written statement, nor the plea has been corroborated by any independent evidence. Plaintiff has not led any evidence in the context of aforesaid previous agreements even these earlier agreements have not been pleaded by her. No unfair advantage is proved to have been taken by the plaintiff on the basis of the aforesaid agreements.

[11]. Learned counsel for the appellant further submitted that it is a case of hardship in terms of Section 20 of Specific Relief Act. The plea of hardship has not been pleaded by the defendant in the written statement. It is settled principle of law that once the agreement to sell is proved with reference to evidence and in the absence of any plea of hardship, Court is not obligated to grant alternate relief in terms of recovery. On both the counts the plea of

the defendant is deficient.

[12]. At last learned counsel for the appellant has submitted that agreement to sell evidences delivery of possession. Since the defendant has taken the plea of total denial in the written statement, no plea of agreements being unregistered has been taken in the written statement. No such plea can be entertained at this stage, particularly when no such plea was raised before the lower Appellate Court.

[13]. In view of aforesaid, defendant has failed to adduce any evidence of earlier agreements in the context of proving that earlier agreements were executed just to secure presence of loan transaction, nor plea of agreements being unregistered has been taken. No such plea was raised before the lower Appellate Court.

[14]. In view of above, the findings recorded by both the Courts concurrently cannot be viewed to have been suffered with any perversity or misreading of evidence in any manner.

[15]. Consequently, this appeal is devoid of merits and the same is accordingly dismissed.

October 20, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE