

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

**R.S.A No.1099 of 2016 (O&M)
Date of decision: 28.03.2016**

Reena

..... Appellant

Versus

Raj Hooda and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.R.Kartikeya, Advocate
for the appellant.

DARSHAN SINGH,J

This Regular Second Appeal has been directed by the appellant-defendant no.1 against the judgment and decree dated 19.01.2016 passed by the learned Additional District Judge, Rohtak, vide which the appeal filed by her against the judgment and decree dated 24.04.2013 passed by learned Additional Civil Judge (Sr. Division), Rohtak, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Respondent no.1-Smt. Raj Hooda has filed the suit seeking decree for specific performance of the contract of sale deed dated 09.03.2005 regarding the sale of the house no. 5 constructed on plot no. 3

and 4 measuring 79 sq. yards situated in Chawla Colony, Rohtak, which the appellant-defendant has agreed to sell to the plaintiff-respondent no.1 for a sum of Rs. 5 lacs. Rs. 2,80,000/- was paid as earnest money at the time of execution of the agreement to sell. The sale deed was to be executed and got registered by 8th June, 2005. It is pleaded that the plaintiff has always been ready and willing to perform his part of contract. Whereas, appellant-defendant no.1 committed breach thereof and she subsequently sold the house in dispute to defendant no.2 on 17.11.2005.

4. Appellant-defendant no.1 contested the suit on the grounds *inter alia* that she did not execute any agreement to sell in favour of the plaintiff on 09.03.2005 or any other date. Her thumb impressions and signatures of her husband were obtained on some blank papers under coercion and threat of dire consequences. The story set up by the plaintiff is manipulated and fictitious. She never agreed to sell her house for Rs. 5 lacs. No earnest money was received by her. It was further pleaded that the plaintiff is engaged in business of finance without license. Defendant was her accountant on a normal salary. Sometimes loans were disbursed by her on the reference of the defendant and for the recovery of the said amount, the plaintiff used to get her signatures/thumb impressions on blank papers. The plaintiff might have used those blank papers. It was further pleaded that she has already sold the house in question.

5. Defendant no.2 also contested the suit on the plea that the plaintiff was not willing to purchase the disputed property as she did not take any step after the expiry of the agreed date till the suit property was

purchased by him on 17.11.2005 for consideration at the market value. Hence, he is a bonafide purchaser. With these pleas, defendants pleaded for dismissal of the suit.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 02.08.2006 :-

1. Whether any agreement to sell dated 09.03.2005 was executed by defendant in favour of plaintiff to sale the suit property detailed in para no.1 of the plaint?OPP
2. Whether any part payment of the sale consideration was made by plaintiff to the defendant?OPP
3. Whether the plaintiff has always remained and is still ready to perform her part of contract?OPP
4. Whether the plaintiff is entitled to the relief sought for?OPP
5. Whether agreement to sell is the result of fraud?OPD
6. Whether defendant no.2 is bonafide purchaser of the property or not and what is its effect?OPD
7. Whether the suit is not maintainable in the present form?OPD
8. Whether the plaintiff has no cause of action to file the present suit?OPD
9. Whether the suit is bad for non-joinder and mis-joinder of the parties?OPD
10. Whether the plaintiff is estopped by her own act and conduct to file the present suit?OPD
11. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court, vide impugned judgment and decree dated 24.04.2013, decreed the suit of the plaintiff-respondent no.1 for specific performance of the agreement to sell dated 09.03.2005.

8. The appeals filed by both the defendants against the aforesaid judgment and decrees was dismissed by the learned First

Appellate Court, vide impugned judgment and decree dated 19.01.2016.

Hence this Regular Second Appeal.

9. I have heard Mr.R.Kartikeya, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contended that the plaintiff has not led any cogent and convincing evidence to establish that she was having the sound financial position to purchase the house in dispute for a sum of Rs. 5 lacs. He contended that infact the plaintiff has obtained the thumb impression of the appellant and signatures of her husband on the blank papers, which were later on manipulated as agreement to sell. He further contended that the decree passed by the learned Courts below has caused undue hardship to the plaintiff as she was having only one residential house. Thus, he contended that the impugned judgment and decrees passed by the learned Courts below are not sustainable.

11. I have duly considered the aforesaid contentions, but I do not find any substance in the contentions raised by the learned counsel for the appellant.

12. The plea raised by learned counsel for the appellant that the plaintiff-respondent had no financial capacity to purchase the house is beyond pleadings. It is settled principle of law that the plea beyond pleadings deserves outright rejection. Moreover, in this case, even from the pleadings of the appellant in the written statement, the sound financial position of the plaintiff-respondent is evident. The appellant has pleaded that the plaintiff is engaged in business of finance without license and the

defendant was her accountant on normal salary. Some times, she used to disburse loans on her (appellant) recommendation. These averments in the written statement clearly indicates that the plaintiff-respondent was having the sound financial capacity, otherwise how she can run the business of finance.

13. The execution of the agreement to sell dated 09.03.2005 Ex.P-1 is proved from the evidence brought on record by the plaintiff-respondent. Plaintiff-respondent has herself stepped into the witness box as PW-1 and categorically deposed about the execution of the agreement to sell dated 09.03.2005 Ex.P-1 by the appellant-defendant in her favour to sell the house in question for a sum of Rs. 5 lacs and has also received the earnest money. PW-2 Surinder Rathi is the witness to the agreement to sell Ex.P-1, who also supported the version of the plaintiff. PW-3 Harbans Lal Gulati has scribed the agreement to sell Ex.P-1 on the instructions of the defendant. He categorically deposed that the said agreement was thumb marked by the appellant and signed by her husband. PW-2 Surinder Rathi has also categorically deposed that her husband Surender was also present at the time of execution of the agreement to sell. Appellant has also admitted the execution of the agreement to sell Ex.P-1 and receipt Ex.P-2 in her cross-examination. She also admitted that the agreement was executed for a sale consideration of Rs. 5 lacs and she received the earnest money. She further admitted the purchase of the stamp papers for execution of the agreement to sell Ex.P-1. In view of the aforesaid admissions and evidence led by the plaintiff-respondent, the plea raised by the appellant that her thumb marked and

signatures of her husband were obtained on blank papers carries no substance. Thus, the execution of the agreement to sell Ex.P-1 dated 09.03.2005 by the appellant in favour of the plaintiff-respondent for the sale of the house in dispute for a sum of Rs. 5 lacs is established.

14. The findings of the learned Courts below with respect to the readiness and willingness on the part of the plaintiff-respondent has not been assailed before this Court. Even otherwise, from the evidence brought on record by the plaintiff-respondent, it is established that she was ready and willing to perform her part of contract.

15. The plea raised by learned counsel for the appellant that the decree for specific performance has resulted in hardship to the appellant-defendant is also without any substance as it is the admitted case of the plaintiff that she has already sold the house in question to defendant no.2 only for a sum of Rs. 1,91,500/- i.e. much below the sale price agreed between the appellant and plaintiff-respondent. If, the appellant would have the necessity of the residential house, there was no reason for her to dispose of the same to defendant no.2. It reflects the conduct of the appellant that she has sold the house to defendant no.2 just to defeat the agreement to sell Ex.P-1 executed by her in favour of the plaintiff-respondent.

16. As it is established from the evidence brought on record that the appellant-defendant no.1 has executed the agreement to sell dated 09.03.2005 in favour of the plaintiff for the sale of the house in dispute for a sum of Rs. 5 lacs. The plaintiff-respondent has always been ready and willing to perform her part of contract, whereas appellant-defendant

had committed breach of contract and rather she has sold the house in dispute to defendant no. 2 just to defeat the agreement to sell Ex.P-1. So, no fault can be found with the concurrent findings recorded by the learned Courts below granting the decree for specific performance of agreement to sell dated 09.03.2005.

17. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

18. Consequently, the present appeal having, no merits, is hereby dismissed with no orders as to costs.

March 28, 2016

s.khan

(DARSHAN SINGH)
JUDGE