

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 134 of 2016(O&M)

Date of Decision:18.1.2016

Rachna

---Appellant

vs.

Rajinder Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Jatinder Nara, Advocate
for the appellant

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

Rekha Mittal,J.

The present regular second appeal has been directed against the concurrent findings recorded by the courts below whereby the suit filed by the respondents for possession by way of specific performance of the agreement to sell dated 15.11.2010 purported to be executed by the appellant for a sale consideration of Rs. 13,80,000/- was decreed by the learned trial court and the judgment and decree passed by the trial court has been affirmed in appeal.

The facts, in brief, are that the respondents filed a suit for possession by way of specific performance of the agreement to sell dated 15.11.2010 in regard to suit property situated at Kacha Muslim Ganj, Circular Road, Ferozepur City for a sale consideration of Rs. 13,80,000/-. As per the case set up by the respondents, a sum of Rs. 3,00,000/- was paid as earnest money at the time of execution of agreement to sell and the sale deed was agreed to be executed on 15.4.2011 on receipt of balance sale consideration. The respondents-plaintiffs always remained ready and willing to perform their part of the agreement and they attended the office of Sub Registrar, Ferozepur alongwith balance sale consideration on the stipulated date but the appellant-defendant did not turn up to perform her part of the agreement. They served a legal notice calling upon the appellant to execute the sale deed but she failed to respond.

The defendant-appellant filed the written statement, denied execution of the agreement to sell and receipt of Rs. 3,00,000/- towards earnest money with further averments that the agreement is a forged and fabricated document prepared in connivance with the attesting witnesses.

The learned trial court bestowed its thoughtful consideration to the contentions of the parties, evidence adduced on record in the light of rival submissions made by their respective counsel and came to hold that the respondents-plaintiffs have been able to prove their case and are entitled to specific performance of the agreement to sell dated 15.11.2010. The findings recorded by the trial court stood test of judicial scrutiny in the court of appeal and as a consequence, the judgment and decree passed by the trial court was affirmed while rejecting the contentions raised by the

appellant.

Still feeling dissatisfied, the present appeal has been preferred by the unsuccessful appellant/vendor under the agreement.

Counsel for the appellant has urged that there are discrepancies and contradictions in the evidence adduced by the respondents and the courts below failed to take note of the lacunae in the case of the respondents/plaintiffs. Counsel pointed out that as per the statement of Rajinder Singh respondent No. 1, Ashwani Galhotra respondent No. 2 was present at the time of execution of the agreement but one of the attesting witnesses to the agreement deposed that Ashwani Galhotra was not present there. Another submission made by counsel is that Ashwani Galhotra has not been examined to prove that either he contributed half of the amount in the alleged payment of Rs. 3,00,000/- towards earnest money or he had arranged 50% of the funds required for execution and registration of the sale deed for payment of balance sale consideration and necessary expenses of registry etc.

I have heard counsel for the appellant and perused the records.

The appellant has denied execution of the agreement to sell with a categorical plea that the same is the result of forgery and fabrication. During course of evidence, she raised a contradictory plea that her signatures were procured by playing fraud upon her. The court in appeal has noticed that no plea of fraud has been raised in the written statement and, therefore, any evidence in this regard cannot be looked into. During her cross examination, she admitted her signatures on the agreement by deposing that she was in need of money and put her signatures on the

agreement at the instance of her son namely Rajesh Kumar being a loan transaction. Not only this, she even denied her signatures on the application under Order VI Rule 17 of the Code of Civil Procedure and the vakalatnama filed by her in favour of Sh. N.K. Kakkar, Advocate. All these facts seriously reflect upon credibility of the appellant and sufficient to hold that her testimony is not worthy of reliance.

Once the appellant has denied execution of the agreement in question, she disentitles herself to challenge plea of the respondents that they always remained ready and willing to perform their part of the agreement. The matter would have been different had she admitted execution of the agreement and pleaded that the vendee was not ready or/and willing to perform his part of the agreement and thus neither entitle to specific performance of the agreement nor refund of earnest money.

The civil dispute is to be decided on the basis of preponderance of probabilities. The plaintiff is not obligated to prove his case beyond shadow of reasonable doubt as is the case in criminal trial. The statement of a witness is to be appreciated as a whole. Some contradictions are bound to occur as a consequence of natural human conduct. Counsel for the appellant tried to point out minor contradictions in the statements of witnesses and the same are not sufficient to hold that the present case raises a substantial question of law for adjudication in second appeal.

In view of what has been discussed hereinabove, neither any substantial question of law arises for adjudication nor there is any error much less illegality in consistent findings recorded by the courts below as

would call for intervention. As a result, the appeal fails and is accordingly dismissed with no order as to costs.

(Rekha Mittal)
Judge

18.1.2016
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