

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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C.M. No. 784-C of 2015
and RSA No. 300 of 2015

Date of Decision: 29.01.2016

Smt. Kunti and another

.....APPELLANTS

VERSUS

Smt. Sushma Mangla

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: Mr. Suman Jain, Advocate,
for the appellants.

Mr. Adarsh Jain, Advocate,
for the respondent.

AUGUSTINE GEORGE MASIH, J

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division) Hodal dated 27.05.2011, whereby the suit for possession by way of specific performance of contract as filed by the respondent-plaintiff has been decreed, appeal against which preferred by the appellants-defendants stands dismissed by the Additional District Judge, Palwal on 01.08.2014.

2. It is the contention of the learned counsel for the appellants that the judgments and decree, as passed by the Courts below, are not sustainable in the light of the fact that the respondent-plaintiff has not been able to prove her readiness and willingness to perform the contract as she has not come present to execute the sale deed on the date fixed i.e.

30.12.2005. He contends that the Courts have wrongly recorded a finding that Raj Kamal-DW-1 had admitted that the respondent-plaintiff and her husband had made a phone call to him that they had arrived in the office of the Sub-Registrar on 30.12.2005 for the purpose of execution of the registration, in fact, in the phone call, it was stated that as the petrol pump has not been allotted and they did not have the amount with them, they would not be able to execute the sale deed. He, thus, contends that there being no readiness and willingness on the part of the respondent-plaintiff to execute the sale deed, the suit could not have been decreed by the Court below and, therefore, the impugned judgments deserve to be set aside.

3. On the other hand, counsel for the respondent-plaintiff states that the Courts have rightly recorded the said finding and have referred to the evidence of DW-1-Raj Kamal. On the basis of the said evidence, he contends that the finding, as recorded by the Courts below, cannot be faulted with. He contends that apart from DW-1-Raj Kamal, DW-4-Pratap Singh, who is also a witness of the defendants, has proved the presence of the respondent-plaintiff before the Sub-Registrar. Similarly, DW-2-Padam Kumar has stated that on 30.12.2005, the respondent-plaintiff Sushma Mangla and her husband along with two other persons had come to the office of the Sub-Registrar to execute and register the sale deed. He, on this basis, asserts that the appeal is devoid of any merit and deserves to be dismissed.

4. I have considered the submissions made by the learned counsel for the parties and on going through the impugned judgments with their able assistance, I do not find any illegality in the same which would call for interference by this Court.

5. Counsel for the parties have not disputed that the respondent-plaintiff has been able to prove the due execution of the agreement to sell dated 07.11.2005 Ex. P-1 for a total sale consideration of ₹ 25,31,250/- as entered into between the parties. The only plea, which has been put forth by the counsel for the appellants, is that the readiness and willingness to perform the part of the contract by the respondent-plaintiff has not been proved, which cannot be accepted in the light of the overwhelming evidence brought on record. Apart from the statements of the witnesses of the plaintiff, the admission on the part of the witnesses of the defendants, namely, Raj Kamal, son of the appellants-defendants, who has admitted the entire case of the respondent-plaintiff by stating in his cross-examination that the respondent-plaintiff and her husband made a telephonic call to them for getting executed the sale deed on 30.12.2005 and they requested the appellants-defendants to appear before the Sub-Registrar, Hodal for execution of the sale deed on the said date. Similarly, Padam Kumar, another witness of the appellants-defendants had admitted that the respondent-plaintiff and her husband along with 1-2 persons had come to the office of the Sub-Registrar for getting executed the registered sale deed on 30.12.2005. This witness has also proved the agreement to sell. DW-4-Pratap Singh has proved the presence of the respondent-plaintiff before the Sub-Registrar and has also admitted regarding agreement to sell and legal notice given to the appellants-defendants at the instance of the respondent-plaintiff. The readiness and willingness on the part of the respondent-plaintiff on 30.12.2005 has been duly proved on record and the findings as recorded by the Courts below being based upon proper appreciation of the pleadings and evidence led by the parties cannot be faulted with.

6. No other point has been argued by the counsel for the parties.

7. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

8. There is no substantial question of law in the present appeal, which requires consideration of this Court.

9. In view of the above, finding no merit in the appeal, the same stands dismissed.

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In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

January 29, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**