

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

RSA No.5429 of 2014 (O&M)

Date of decision: 08.04.2016.

Bhudevi

.... Appellant

Vs.

Ami Lal and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Gorakh Nath, Advocate
for the applicant-appellant.

Amol Rattan Singh, J.

Civil Misc. No.3821-C of 2016

For the reasons recorded in the order dated 05.04.2016. the application is allowed and the appeal is ordered to be restored to its original number.

Since no notice had been issued in the appeal itself, the same is taken on board today itself for arguments.

RSA No.5429 of 2014

This is an appeal filed by the defendants in a suit filed by respondent No.1 herein, seeking specific performance of a contract that he alleged was entered into by the present appellant with him on 24.08.2006, by which she (the appellant-defendant No.1) agreed to sell her 1/20th share, i.e. 4 marlas equal to 120 sq. yards of land comprising 4 kanal 0 marla, described in detail in the suit filed by her.

It was contended by the first respondent herein (plaintiff-hereinafter to be referred to as the plaintiff) that as per the said agreement, the sale consideration was agreed at Rs.1,44,000/- of which the appellant-vendor

received a sum of Rs.1,30,000/- at the time of agreement itself, from respondent No.2 (also defendant No.2 before the Civil Judge), who was a co-buyer alongwith the plaintiff. Thus both the present respondents, i.e. the plaintiff and respondent-defendant No.2 paid Rs.65,000/- each as earnest money and part payment of the total consideration of Rs.1,44,000/-, at the time that the agreement was entered into, on 24.08.2006.

2. It was further contended in the plaint that the appellant-vendor would execute the sale deed in favour of the plaintiff and respondent No.2 by 24.02.2008, on receipt of the balance consideration of Rs.14,000/-. However, as stated in the judgment of the learned Civil Judge, it was further contended in the plaint that the sale deed could not be executed by the said date “due to some legal impediment”.

Thereafter, the date of execution, i.e. for the registration of the sale deed, was extended upto 24.02.2009 by mutual consent between the parties (the date wrongly given by the learned Civil Judge as 24.03.2009 in the earlier part of the judgment).

On 24.02.2009, the plaintiff contended that he remained present at the office of Sub-Registrar, Palwal, to get the sale deed executed alongwith the balance money and other necessary expenditure to be incurred but the appellant-vendor did not turn up to perform her part of the contract.

It was further contended that the plaintiff was still willing to execute the contract by payment of the remaining consideration money but despite requests to the appellant-vendor, she did not get the sale deed executed. Consequently, the suit was filed, with the appellant impleaded as defendant No.1 and the present respondent No.2 impleaded as proforma

defendant No.2.

3. Upon notice issued to her, the appellant took preliminary objections with regard to maintainability, locus standi and estoppel etc. and on merit she contended that though she is owner of the suit property and had entered into an agreement to sell the same to the plaintiff and defendant No.2, for a sum of Rs.1,44,000/-, however, she denied receipt of Rs.1,30,000/- as earnest money.

It was further stated in the reply of the present appellant that as there existed blood relations between the parties, she had trusted that they would pay the entire consideration amount before the Registrar at the time of registration of the sale deed. She further alleged that the contents of the agreement and receipt were never read out to her.

Still further, it was contended in the written statement, that the appellant-vendor had never handed over the physical possession of the suit property to the prospective vendees and that she remained present in the office of the Sub-Registrar the whole day on 24.02.2009 and was ready to perform her part of the contract and even got her presence marked there but the plaintiff never turned up.

4. Respondent-defendant No.2 filed a separate written statement also taking preliminary objections of lack of maintainability and estoppel etc. On merits, stating that he and plaintiff had entered into an agreement to buy the suit property for a sale consideration of Rs.1,44,000/- but no amount was paid as earnest money to the vendor, i.e. the present appellant. Respondent-defendant No.2 agreed with the contention made by the appellants in her written statement that the entire sale consideration was to be paid before the

Sub-Registrar at the time of the execution of the sale deed. The relationship between the parties was admitted and it was further stated that in fact, even the receipt of Rs.1,30,000/- dated 24.08.2006 was only a formality, as was the agreement to sell.

5. From the pleadings of the parties, the following issues were framed by the learned Civil Judge (Junior Division), Palwal:-

- “1. Whether the plaintiff is entitled to a decree for specific performance of agreement to sale dated 24.08.2006? OPP
2. Whether the plaintiff is entitled to a decree of permanent injunction as prayed for? OPP
3. Whether the plaintiff is still ready and willing to perform his part of contract? OPP
4. Whether suit of the plaintiff is not maintainable? OPD
5. Whether the plaintiff has no locus standi to file the present suit? OPD
6. Whether the plaintiff has concealed the material facts from the court? OPD
7. Whether the plaintiff is entitled for special cost under Section 35-A of CPC? OPD
8. Relief.”

6. The plaintiff-respondent No.1 examined himself as PW2 and one Lal Chand Sharma as PW1. He also tendered the following documents in evidence:-

- | | |
|------|-----------------------------|
| “PW1 | Agreement dated 24.08.2006 |
| PW2 | Receipt dated 24.08.2006 |
| PW3 | Affidavit dated 25.02.2008 |
| PW4 | Agreement dated 25.02.2008 |
| PW5 | Affidavit dated 24.02.2009” |

The appellant-defendant No.2 examined the following witnesses:-

“DW1	Khem Chand
DW2	Kish Chand
DW3	Lajja Ram
DW4	Parvesh Kumar”

She also tendered the following documents in evidence:-

“Ex.D1	Special Power of attorney dated 19.10.2011
Ex.D2	Affidavit dated 24.02.2009
Ex.D3	Site map”

7. On appraisal of the evidence before him, the learned Civil Judge found that, as a matter of fact, the appellant and respondent-defendant No.2 are mother and son and respondent No.1-plaintiff is the nephew of the husband of the appellant, being his elder brothers' son. Consequently, the appellant and respondent-defendant No.2 testified in terms of their written statements with respondent No.2 taking the same stand as the appellant-defendant No.1-vendor, with the husband of the appellant (DW1) also taking the same stand as his wife and son. DW3 was the Power of Attorney holder for the appellant-defendant No.1 who also testified in her favour.

Of the two independent witnesses, PW1 stated that he was the scribe of the agreement to sell and the receipt dated 24.08.2006, both of which he had read over to the parties, after which they had appended their

respective signatures (thumb impression in the case of the appellant-vendor-defendant No.1) thereto.

On behalf of the appellant-defendant, the attesting witness to the agreement, i.e. Kish Chand, DW2, testified in support of his affidavit in favour of the defendants, though corroborating the relationship between the parties. He stated that though he had appended his signature to the agreement, actually no sale consideration was ever paid and the deed-writer had not even read over the documents to the parties.

8. The learned Civil Judge, considering that each party had led evidence to their own benefit, as regards payment of Rs.1,30,000/-, found that though in the plaint the plaintiff had stated that he and defendant No.2, i.e. the son of the present appellant, had given Rs.65,000/- each to the appellant-vendor, however, in his cross-examination, he stated that he had paid the entire amount himself. It was further held that though in the plaint it was stated that the suit property had been handed over to the plaintiff-vendee, there was no record produced to that effect.

It was further found that both parties produced affidavits stating that they had remained present in the office of the Sub-Registrar on 24.02.2009, but the plaintiff-respondent No.1 could not show that he had ever approached the appellant-vendor to show his willingness to get the sale deed executed, and even after 24.02.2009, he had not served any legal notice on her to ask her to perform her part of the contract.

The learned Civil Judge further held that it was difficult to believe that the sale deed was not executed despite Rs.1,30,000/- having been paid, as alleged, as there was no rationale for keeping the registration of the

sale deed pending for such a long period for only want of Rs.14,000/-, when Rs.1,30,000/- was already alleged to have been paid.

It was, therefore, held that the plaintiff-respondent No.1 had failed to show that he was ready and willing to perform his part of the agreement and consequently, the suit was dismissed.

9. In the appeal filed by respondent No.1 before the learned lower Appellate Court, i.e. the Additional District Judge, Palwal, after appraising the entire evidence, also found that all the defence witnesses were close relatives of the appellant, inasmuch as DW1 was her husband, DW2, i.e. the attesting witness, Kish Chand, was her nephew and DW3, i.e. the person who held the Power of Attorney issued by the appellant, was her grand-son, i.e. son of the proforma respondent-defendant No.2.

On the other hand, the scribe, i.e. PW1, Lal Chand Sharma, was not a relative and he had testified to having drawn up the agreement as also the receipt which he further stated that he had read over to the parties, after which they had appended their signatures/thumb impressions thereto.

Hence, holding that the documentary evidence was entirely against the appellant-defendant No.1 and further, that the plaintiff (respondent No.1 herein) had proved his presence in the office of the Sub-Registrar on 24.02.2009, the learned lower Appellate Court allowed the appeal, further holding that it is not possible that somebody who had paid Rs.65,000/- as earnest money would not be able to pay Rs.7000/- more that fell to his share of the consideration amount.

Accordingly, the judgment and decree of the learned Civil Judge was set aside and the suit filed by the plaintiff (respondent No.1) was decreed

in his favour by the lower Appellate Court.

11. Before this Court, though Mr. Gorakh Nath, learned counsel for the appellant, has tried to reiterate the findings given in the judgment of the learned first appellate Court reversing that of the learned Civil Judge (Jr. Divn.), Palwal; however, he could not deny that the documentary evidence with regard to receipt of consideration of Rs.1,30,000/- was wholly against the appellant.

Undoubtedly, the learned lower Appellate Court has not discussed in detail the cross-examination of respondent No.1-plaintiff, as has been done by the learned Civil Judge, to the effect that he, contrary to his written statement, stated while testifying that he had paid the entire amount of Rs.1,30,000/- and not just Rs.65,000/-, however, I do not find that ground enough to reverse the finding that the only independent witness, i.e. the scribe, PW1 Lal Chand Sharma, testified to the receipt and the agreement itself, having been duly read over to the parties and the payment made in his presence.

Without a doubt, it is possible that respondent No.1 paid only Rs.65,000/- and the remaining amount of Rs.65,000/- that had to be paid by the proforma defendant-respondent, i.e. the son of appellant, was only admitted to have been paid by way of a formality; that however, in the opinion of this Court, even if it is so, (though there is no documentary proof with regard thereto), cannot override the fact that, admittedly, a separate receipt was issued with regard to receipt of Rs.1,30,000/- as the major part of the consideration amount. Even if the appellant is taken to be an illiterate lady, she having only thumb marked the agreement to sell as also the receipt,

factually, both these documents are also signed by Khem Chand, husband of the appellant, as also by Kish Chand who was the other attesting witness thereto.

As has now been noticed by this Court, Kish Chand is shown to be the brother of plaintiff-respondent No.1, though he testified against him. However, even his testimony, in the opinion of this Court, cannot override the documentary evidence, which was not at all denied by the appellant and her witnesses, who simply stated that the said documents were executed in good faith, the parties being immediate relatives to each other.

Undoubtedly, again that is a possibility, but if there was so much trust between the parties, I do not see any reason for them to have even executed the said documents in the first place, as they could have simply gone to the office of Sub-Registrar, even without any consideration money having been paid earlier and simply have paid the entire amount at the time of execution of the sale deed. Since they chose to actually execute the agreement and a receipt was issued to the effect that Rs.1,30,000/- had been received by the appellant, the presumption, in the circumstances, would most definitely be that the same was done because such consideration was actually paid, as otherwise there would have been no reason to do so. To repeat, it is no ones' case that the signatures of the appellants' husband, as also her attorney (brother of respondent No.1-plaintiff), are not genuine on either of the documents, i.e. the agreement to sell or the receipt in respect of Rs.1,30,000/- having been received by the appellant. Hence, with the authenticity of the documents not in doubt, it is not possible to hold that the contents thereof were not known to any of the signatories to those

documents.

12. In view of the above, I find no reason to interfere with the judgment of the lower Appellate Court.

Consequently, the appeal is dismissed *in limine*, with no order as to costs.

April 08, 2016
vcgarg

(Amol Rattan Singh)
Judge