

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

**RSA No. 1357 of 2016 (O&M)
Date of Decision: January 11, 2017**

Jeeto Devi

..Appellant(s)

Versus

Shyam Lal

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Bhawesh Chaudhary, Advocate
for the appellant.

ANITA CHAUDHRY, J.

This is the regular second appeal filed by the defendant against whom a decree for specific performance had been passed. The appellant herein is the defendant against whom Shyam Lal had filed a suit for possession by way of specific performance with respect to 2 Marlas of land, situated in village Ujha, Sub Tehsil, Bapoli, District Panipat.

The plaintiff claimed that Jeeto w/o Desraj had entered into an agreement to sell 2 Marlas of land vide agreement dated 03.02.2009 and earnest amount of Rs.50,000/- was paid in the presence of witnesses. The total consideration that was agreed was Rs.70,000/-. The sale deed was to be registered on 02.08.2009 on receipt of balance

consideration of Rs.20,000/- before the Sub-Registrar. The plaintiff claimed that he was always ready and willing to pay the balance sale consideration and get the sale deed registered and sent a legal notice on 01.02.2010 but the defendant refused to receive it and avoided the execution. A reminder was also sent on 10.05.2010 and finally the suit was filed.

The plaintiff claimed that the date of registration of the sale deed was a holiday but he was present in the Sub-Registrar's Office on the next day but the defendant did not turn up and he executed an affidavit and got his presence marked with the Sub-Registrar, Bhapoli. He also claimed that he had appeared before the Sub-Registrar on 18.02.2010.

The defendant contested the suit and took various preliminary objections and pleaded that she had not entered into any agreement and in fact she was in need of money for treatment of her husband and she had approached the plaintiff who asked her to give the copy of the sale deed of her plot and bring a blank stamp paper of Rs.10/- for security and those were handed over to the plaintiff and she was asked to come on the next date for payment and on the next date the plaintiff prepared some writing on the blank papers and obtained her signatures and she could not read the contents of the same as she was illiterate. A plea was taken that she took Rs.30,000/- from the plaintiff for a period of two months and that amount was repaid after two months in the presence of Jyoti and when she demanded her documents

back, she was told that the documents would be returned after they were traced. Accepting his submission, the defendant did not get any writing and she had approached the plaintiff for return of the documents but the matter was prolonged and the plaintiff became dishonest. It was pleaded that the document was forged and fabricated in collusion with the witnesses.

Issues were framed and both the parties were called upon to lead their evidence. The plaintiff examined himself and the witnesses to the agreement and the legal notice and the reminder sent through the lawyer.

On the other hand, the defendant stepped into the witness box and examined her brother Ramesh.

The trial Court decreed the suit. It noted that no complaint had been given by the defendant that the documents had been forged nor she had led any evidence to show that the amount was returned or it was a case of loan. No evidence was even led to show that her husband was serious and she needed any money. Lower Court decreed the suit and directed the defendant to execute the sale deed within two months. It also gave liberty to the plaintiff to get the same executed through the Court in case the defendant failed to execute it.

Aggrieved by the judgment, the defendant preferred an appeal before the First Appellate Court, which also came to be dismissed on 03.12.2015.

Records had been received.

Counsel for the appellant had urged that an application under Order 41 Rule 27 CPC had been filed and they wanted to introduce some additional evidence namely the copy of the sale deed, vide which the appellant had purchased this property and they wanted to show that the plot had been purchased for a sum of Rs.1 lac and it could not have been sold for Rs.70,000/-. The counsel had also urged that the photographs of the house and the electricity bills were also necessary to be introduced by way of additional evidence. The counsel submitted that these documents are essential for the just decision of the appeal.

Continuing with the arguments, the counsel had submitted that the agreement was not scribed by a regular scribe and it does not contain any other condition which are normally introduced and the appellant had taken a loan which had been returned. It was urged that husband of the appellant had died and there are contradictions appearing in the statement of witnesses as one of the witness had stated that the agreement was registered whereas the agreement to sell was not registered. It was urged that a loan of Rs.30,000/- was taken, which was to be repaid with interest @ 2% and that amount had been paid. Reliance was placed upon *Smt. Mayawanti Vs. Smt. Kaushalya Devi 1990(3) SCC1*.

I have carefully gone through the records. It is not in dispute that the agreement to sell bears the signatures of the appellant, which were not disputed before this Court. The appellant in her

affidavit Ex.DW1/A had pleaded that she needed Rs.30,000/- for the treatment of her husband and for that purpose she had approached the plaintiff. The affidavit is silent with respect to the interest amount and the written statement filed by the defendant does not refer to the rate of interest. No document had been produced by the defendant to show that her husband was un-well during that period or that he was taking treatment. In fact, the defendant could not lead any evidence in support of her pleadings. She also failed to prove that she had repaid the amount. The plaintiff had examined himself, Uttam – PW2 and Ramphal – PW3 besides Anil Kumar, Advocate who had sent the legal notice. Both the witnesses have spoken about the agreement executed by Jeeto. The counsel for the appellant had stated that there were cuttings in the agreement but I find that there are no cuttings in Annexure P-1 available at page no.89 of the record. The stamp paper had been purchased by Jeeto. A legal notice had been sent. The appellant did not respond to the notice and did not lodge any complaint with the police. Had there been any fraud, the appellant would have taken some steps. The appellant had admitted that she had taken some amount, therefore, she was expected to show that it was a loan amount and that had been repaid. It appears that the plea has been taken only for the sake of it.

So far as the additional evidence is concerned, a typed copy of the sale deed has been placed on record. The original is said to be in possession of the plaintiff. This document was in the knowledge

of the appellant from the very beginning and the appellant has been unable to explain as to why it could not be produced in evidence earlier. The photographs and the electricity bills or the copy of the sale deed are not documents which are required by the Court to enable it to pronounce the documents or for any other substantial cause. The Court can permit a party to adduce additional evidence if the appellant had been able to satisfy the conditions required in Order 41 Rule 27 CPC. I find that the plaintiff had failed to establish that notwithstanding the exercise of due diligence the evidence could not be produced. The application (CM No.3795-CI of 2016) is dismissed.

Both the Courts below have recorded a finding of facts on merits. There is no substantial question of law involved. It cannot be said to be a case of hardship. Both the Courts have appreciated the evidence and have given a finding against the defendant and there is no illegality. The execution of the agreement had been proved. It is the defendant who failed to execute the sale deed even after the receipt of the notice. There is no infirmity in the judgments of both the Courts below.

The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

January 11, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No