

**RSA No. 3254 of 2016 (O&M)**

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

**RSA No. 3254 of 2016 (O&M)  
Date of Decision: 17.2.2017**

Smt. Sunita Rani

....Appellant

Vs.

Rajnish Kumar and another

.....Respondents

**CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present : Mr. Ashok Kumar Khunger, Advocate  
for the appellant.

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**RAMESHWAR SINGH MALIK J. (ORAL)**

**CM No. 8682-C-2016**

Applicant seeks condonation of delay of three days in filing the present appeal.

After hearing learned counsel for the applicant, instant application is allowed for the reasons stated therein. Delay of three days in filing the present appeal is condoned.

CM stands disposed of.

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Instant regular second appeal, at the hands of unsuccessful plaintiff, is directed against the impugned judgment and decree dated 13.10.2015 passed by learned first appellate court, whereby first appeal of the plaintiff-appellant was dismissed, upholding impugned judgment and decree dated 19.9.2014 of the learned trial court, partly allowing the suit for

specific performance of agreement to sell, thereby granting alternative relief of recovery of earnest money, alongwith interest.

Brief facts of the case, as noticed by learned first appellate court in para 2 of its impugned judgment, are that defendants alleged themselves to be owner of two shops bearing No.7 and 8, having been allotted to the defendants vide receipt No.000020 and 000021 dated 07.01.1999 by the Municipal Council, Abohar, agreed to sell the same to the plaintiff vide agreement dated 07.12.2005 for total consideration of ₹4,75,000/-. The defendants received an amount of ₹50,000/- as earnest money from the plaintiff on 07.12.2005. The defendants further agreed that on 27.12.2005, defendants shall further receive earnest money of ₹3,06,000/- and shall hand over the possession of the shops to the plaintiff. The balance amount of ₹1,19,000/- shall be received at the time of execution of the sale deed. Stipulated date for execution of the sale deed was fixed on or before 10.04.2006. The plaintiff paid amount of ₹3,06,000/- to the defendants on 27.12.2005 and writing to this effect was executed at page No.2 of the agreement dated 07.12.2005. On 27.12.2005, defendants also handed over possession of the shops in dispute to the plaintiff. The plaintiff had always been ready and wiling to perform her remaining part of agreement. The plaintiff made further averments regarding the other recitals of the agreement dated 07.12.2005.

It was further averred that plaintiff was ready and willing to perform her part of agreement on 10.04.2006 but the defendants agreed to get the sale deed registered after one month i.e on 10.05.2006 and in this regard, writing was also executed on the reverse side of page No.2 of the agreement dated 07.12.2005. On 10.05.2006, the plaintiff came present and waited for defendants throughout the day at Tehsil Compound Abohar in the office of

Sub Registrar Abohar from 9.00 a.m to 5.00 p.m, along with balance sale consideration and expenses for execution and registration of the sale deed. However, the defendants did not turn up and the plaintiff got her presence marked from the Notary Public by getting her affidavit attested on 10.05.2006. The plaintiff thereafter had been requesting the defendants to execute and register the sale deed qua the property in dispute in favour of the plaintiff, but the defendants were avoiding the same. In order to avoid litigation, plaintiff got served legal notice upon the defendants through registered A.D post on 08.11.2008 and requested the defendants to execute the sale deed in favour of the plaintiff on 21.11.2008. On 21.11.2008, plaintiff remained present before the office of Sub Registrar, Abohar throughout the day, but the defendants did not turn up. The plaintiff on that day also, got her presence marked by way of getting two affidavits attested, one from the Executive Magistrate and other from the Notary Public. The defendants were repeatedly requested to perform their remaining part of contract, but with no effect. Hence the plaintiff filed the suit claiming relief of specific performance of agreement dated 07.12.2005 and in the alternative decree for recovery of ₹7,12,000/-. The plaintiff further claimed relief of permanent injunction as well as symbolic possession qua the property in dispute.

Having been served, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Replication was filed by the plaintiff. On completion of pleadings of parties, learned trial court framed the following issues.

1. Whether the defendant has executed an agreement to sell dated 07.12.2005 of double story shops in question in favour of the plaintiff? OPP

2. If issue No.1 is proved, whether the plaintiff is entitled for possession by way of specific performance of agreement in question or in the alternative for recovery as prayed for? OPP
3. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
4. Whether the plaintiff is estopped by his own act and conduct and inaction from filing the present suit? OPD
5. Whether the plaintiffs have no cause of action or locus standi to file the present suit? OPD
6. Whether the suit is bad for non joinder and mis-joinder of necessary parties? OPD
7. Whether the plaintiff has concealed material facts from this Court? OPD
8. Relief.

In order to prove their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court partly decreed the suit, granting alternative relief of recovery of earnest money, alongwith interest, vide impugned judgment and decree dated 19.9.2014. Dissatisfied, plaintiff filed her first appeal which came be dismissed by learned first appellate court vide impugned judgment and decree dated 13.10.2015, upholding the judgment and decree passed by learned trial. Hence this regular second appeal at the hands of the plaintiff.

Heard learned counsel for the appellant.

During the course of hearing, when asked to show the document of title, including any conveyance deed issued by the Municipal Council in favour of defendants-vendors of the plaintiff, so as to enable this Court to consider, whether the vendors of appellant were having title over the suit land, for which a direction can be issued to the defendants-respondents to execute the sale deed in favour of the appellant, learned counsel for the

appellant had no answer and rightly so, it being a matter of record. Once the defendants-respondents, vendors of the plaintiff-appellant, were not having any clear title over the suit property, learned courts below were unable to decree the suit of the plaintiff-appellant in toto. Suit was rightly decreed partly, granting alternative relief to the plaintiff-appellant for refund of earnest money, alongwith interest @ 9 % per annum from the date of agreement to sell dated 27.12.2005 and future interest @ 6 % per annum from the date of decree till its actual realisation. Having said that, this Court feels no hesitation to conclude that learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

It was own pleaded and argued case on behalf of the plaintiff-appellant that there was recital in the agreement to sell dated 7.12.2005 that after the defendants-vendors would become owner of the suit property on issuance of the relevant document of title in the form of conveyance deed in their favour by the competent authority of the Municipal Council, they would execute the sale deed in favour of the appellant. However, as noticed hereinabove, no such conveyance deed had been issued in favour of the defendants-respondents by the competent authority of Municipal Council, nor any such conveyance deed was either part of judicial record or could be shown even to this Court by learned counsel for the appellant. In the absence of document of title in favour of the defendants, suit of the plaintiff-appellant could not have been decreed for specific performance of agreement to sell dated 7.12.2005. Under these circumstances, it can be safely concluded that learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at just conclusion, learned first appellate court re-appreciated facts as well as evidence available on record. Relevant observations made by learned first appellate court in para 25 of the impugned judgment, which deserve to be noticed here, read as under:-

“The appeal having been preferred only by the plaintiff-appellant, the contentions of the learned Counsel for the appellant-plaintiff are to be decided. Only contention advanced by the learned Counsel for the appellant-plaintiff is that plaintiff-appellant is ready to accept the defective title of the property in dispute and Municipal Council, Abohar can also be directed to execute conveyance deed in favour of the appellant-plaintiff. However, in the considered opinion of this Court this contention of the learned Counsel for the appellant-plaintiff cannot be accepted. Admittedly, the defendants were not owner of the property in dispute at the time plaintiff entered into agreement to sell dated 07.12.2005. Although the property in dispute was allotted by the Municipal Council, Abohar to the defendants, but the plaintiff at the time of execution of agreement itself was aware of the defect in the title of the defendants over the suit property. The plaintiff has not led any evidence on the file to show that the defendants have become owner of the suit property till the decision of the suit by the learned Trial Court. Since the defendants themselves are not owner of the property in dispute, the defendants cannot be directed to execute conveyance deed in favour of the plaintiff on the basis of agreement in question. In the judgment of the Hon'ble Punjab and Haryana High Court in case titled as Pal Singh and others Versus Uma Mehta and others reported as 1997 (1) R.C.R. ( Civil) 376 as relied upon by the learned Counsel for the respondents-defendants it has been held that vendor must have valid title for a valid

transfer of title to the vendee. In the absence of complete ownership of the defendants over the suit property, no direction can be issued to the defendants to execute sale deed in favour of the plaintiff qua the suit property. The contention of the learned Counsel for the plaintiff-appellant for giving directions to the Municipal Council, Abohar to execute conveyance deed in favour of the plaintiff cannot be accepted because Municipal Council, Abohar is not party to the present case and no such directions can be issued to the person who is not party to the lis. The plaintiff at the time of execution of the agreement dated 07.12.2005 as well as at the time of filing of the suit was aware of that title of the suit property does not vest with the defendants and Municipal Council, Abohar is owner of the property in dispute. In these circumstances the plaintiff-appellant could and should have arrayed the Municipal Council, Abohar as party in the present case. However this has not been done.”

It has also gone undisputed before this Court that Municipal Council was admittedly not impleaded as party-defendants by the plaintiff-appellant and that too, for no good reasons. In fact, under the peculiar facts and circumstances of the case, Municipal Council was a necessary party. Once the Municipal Council did not issue any conveyance deed and document of title in favour of defendants-respondents, for one or the other reasons, suit of the plaintiff could not have been decreed for the relief of specific performance. In this view of the matter, learned courts below were left with no other option except to partly decree the suit of the plaintiff for alternative relief of refund of earnest money alongwith interest. That is what has been done by the learned courts below. In this view of the matter, it is held that no fault can be found with the concurrent findings of facts, recorded by learned courts below in their respective impugned judgments

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and decrees and the same deserve to be upheld, for this reason also.

Finally, no question of law much less substantial question of law has been pointed out by learned counsel for the appellant, nor any substantial question of law has been found involved in the present appeal, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)**  
**JUDGE**

17.2.2017  
*Ak Sharma*

*Whether speaking/reasoned Yes/No*  
*Whether reportable: Yes/No*