

RSA No. 341 of 2016 (O&M)

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

RSA No. 341 of 2016 (O&M)

Date of Decision: 16.2.2017

Birmati

.....Appellant

Vs.

Naseeb Singh

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. J.S.Maani pur, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

CM No. 1085-C-2016

Applicant seeks permission of the Court to make the deficiency
of court fee good.

Application is allowed, as prayed for.

CM stands disposed of.

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Feeling aggrieved against the impugned judgment and decree dated 6.7.2015 passed by learned first appellate court, whereby first appeal filed by the defendant was dismissed, upholding the impugned judgment and decree dated 21.5.2012 of the learned trial court, decreeing the suit for possession by way of specific performance of agreement to sell, unsuccessful defendant has approached this Court, by way of present regular second appeal.

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Brief facts of the case, as noticed by the learned first appellate court in para Nos. 2 to 4, of its impugned judgment, are that plaintiff filed suit for possession by way of specific performance of agreement to sell dated 28.9.1999 regarding the plot and house in dispute. Defendant was owner in possession of plot measuring 575 sq. yards alongwith constructed house thereupon situated at Arya Nagar, Tehsil Road within the jurisdiction of Municipal Committee, Jhajjar, which is bounded as under (hereinafter referred to as house and plot in dispute;-

East : Plot of Dr. Balbir Singh 83'

West : Plot of Om Parkash 80'

North : Plot of Ramdev Dhingra 61'

South : Road Gai Sare Amm PWD 66'

It was averred that defendant had entered into the agreement to sell dated 28.9.1999 for the sale of plot and house in dispute at the rate of ₹3200/- per sq. yards, total amount to ₹18,40,000/-. The plaintiff paid ₹3,00,000/- as earnest money to the defendant. It was agreed that the defendant would get the sale deed executed and registered in the office of Sub Registrar, Rohtak on 31.3.2000 in favour of the plaintiff or any other person of the plaintiff's choice on payment of balance sale consideration by the plaintiff, which shall also be paid on the said date. It was also agreed between the parties that in case defendant failed to get the sale deed executed and registered on 31.3.2000, then plaintiff would have right to get the sale deed executed through court. If the sale deed executed and registered through court then the defendant shall be liable to pay the expenses and cost of the same. One case relating to the plot and house in dispute was pending in the Hon'ble High Court and therefore, it was agreed

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that if it is not decided up to 31.3.2000 then the date of registration and execution of the sale deed would be extended by the defendant. The defendant would execute and get registered the sale deed within fifteen days from the date of decision of Hon'ble High Court in favour of the plaintiff. The parties to the agreement, after understanding and admitting the contents of the agreement as correct, had put their signatures and thumb impression on the agreement in the presence of the witnesses. The witnesses also put their signatures and thumb impressions on the agreement to sell.

It was further averred that on 31.3.2000, the plaintiff remained present in the office of Sub Registrar, Rohtak, alongwith the balance sale consideration and necessary expenses for stamps and registration, but the defendant failed to appear. He got his attendance marked in the office of Sub Registrar Rohtak. He moved an application and got the affidavit attested from the Registrar regarding his presence on the said date. He thereafter served a legal notice upon the defendant through registered post calling upon the defendant to get the sale deed registered as per agreement but she failed to reply the same and finally, on 22.9.2000 she refused to execute and get registered the sale deed in favour of the plaintiff and refused to extend the date of agreement. The plaintiff was and is still ready and willing to perform his part of contract but the defendant has failed to perform his part of the contract.

Having been served in the suit filed by the plaintiff, defendant appeared and filed her contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication controverting the plea taken in written statement and reiterating the stand taken in the plaint. On completion of pleadings of the parties, learned trial court framed the

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following issues:-

1. Whether the plaintiff is entitled to the possession of the suit land as detailed in para No.1 of the plaint by way of specific performance of the agreement to sell dated 28.9.1999 on payment of the balance sale consideration alongwith other stamp, registration and incidental charges?OPP
2. Whether the plaintiff in the alternative is entitled to the recovery of earnest money alongwith interest at the rate of Rs. 2% per month alongwith costs from the defendant till the date of realization of the decretal amount?OPP
3. Whether the plaintiff has no locus standi to file the present suit?OPP
4. Whether the suit is not maintainable in the present form?OPD
5. Whether the plaintiff has no cause of action to file the present suit?OPD
6. Whether the defendant is entitled to special costs under Section 35-A CPC?OPD
7. 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 came to the conclusion that plaintiff has duly proved his case for possession by way of specific performance of agreement to sell dated 28.9.1999. Accordingly, suit was decreed vide impugned judgment and

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decree dated 21.5.2012. Dissatisfied, defendant filed her first appeal, which also came to be dismissed by the learned first appellate court vide impugned judgment and decree dated 6.7.2015. Hence this regular second appeal at the hands of the defendant.

Heard learned counsel for the appellant-defendant.

A bare reading of both the impugned judgments passed by learned courts below would make it crystal clear that plaintiff-respondent has duly proved his case by leading cogent and convincing evidence. On the other hand, defendant-appellant was found having no case either on facts or in law. Plaintiff has duly discharged his onus and proved due execution of agreement to sell dated 28.9.1999. Payment of earnest money was also duly proved. Defendant-appellant agreed to execute the sale deed on 31.3.2000. Plaintiff remained present in the office of Sub-Registrar with balance sale consideration and got his attendance marked on application and affidavit attested by Sub-Registrar as Ex.P-9. Agreement to sell was proved as Ex.P-2. Application of the plaintiff for marking his presence before the Sub-Registrar was proved as Ex.P-8.

When the defendant failed to appear before the Sub-Registrar for getting the sale deed executed, plaintiff served legal notice dated 5.9.2002 (Ex.P12) on the defendant-appellant, but to no avail. Immediately thereafter, plaintiff filed present suit on 27.9.2002. Since the defendant-appellant denied her signatures on the agreement to sell, plaintiff produced Naresh Kataria, Handwriting and Fingerprint Experts as PW3. Signatures and thumb impressions of defendant-appellant were also sent for comparison in Government Forensic Science Laboratory, Madhuban, whose report was proved on record as Ex. PE. The cumulative effect of oral as well as

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documentary evidence, including expert opinion produced by both the parties, was that signatures and thumb impressions of defendant-appellant were duly proved on the agreement to sell. She miserably failed to prove her pleaded case. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their impugned judgments and decrees and the same deserve to be upheld.

Although defendant-appellant denied the pleaded case of the plaintiff in its entirety, yet she miserably failed to prove her stand taken in the written statement. There was no justification for her non appearance before the Sub-Registrar on the target date. Her signatures and thumb impressions on the agreement to sell, which were totally denied by her, also came to be duly proved by way of expert evidence, referred to hereinabove. Documentary as well as oral evidence was appreciated by the learned courts below in correct perspective, before recording their respective cogent findings, which have been found based on sound reasons, thus, the impugned judgments and decrees deserve to be upheld, for this reason also.

Learned counsel for the appellant vehemently contended that total case of the plaintiff-respondent was based on fraud and misrepresentation, however, he miserably failed to substantiate his argument, while referring to any relevant material available on record in this regard. Once the defendant-appellant was raising the plea of fraud, heavy onus was on her to prove the same by leading cogent evidence. However, she miserably failed to do so, because there was no such evidence available on record. On the other hand, as noticed hereinabove, plaintiff has duly proved the agreement to sell as Ex.P2 and his attendance in the office of Sub-Registrar. He has also duly proved his readiness and willingness to perform

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his part of the contract. 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 as well.

The abovesaid view taken by this Court also finds support from the following judgments:-

1. Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal and others, 2015 (2) SCC (civil) 350 (SC)
2. Punjab Urban Planning and Dev. Authority Vs. M/s Shiv Saraswati Iron and Steel Re-Rolling Mills, 1998 AIR (SC) 2352 (SC)
3. Gautam Sarup Vs. Leela Jetly and others, 2008 (7) SCC 85 (SC)
4. Zarina Siddiqui VS. A.Ramalingam alias R.Amarnathan, 2015 (1) SCC 705 (SC)
5. Swarn Singh Vs. Swarn Kaur and others, 2004 (2) RCR (civil) 505 (P&H)
6. Santa Singh Vs. Tarsem Singh, 2010 (67) RCR (civil) 520 (P&H)
7. M/s Machhi Ram Kishan Singh Sidhana, Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (civil) 506

Before arriving at a just conclusion, learned first appellate court re-considered and re-appreciated true facts of the case as well as evidence available on record, in the correct perspective. Cogent findings recorded by learned first appellate court in para 15 of its impugned judgment, which deserve to be noticed here, read as under:-

“In the present case, in order to prove his case the plaintiff has examined PW1 Satbir Saini Deed Writer, PW2 Sat Parkash Attesting witness, PW3 Naresh Kumar Hand Writing and Finger print Expert and has himself appeared as PW4.

On the other hand, appellant/defendant has examined DW1 Ran Singh his relative she himself appeared as DW2 Nitesh DW3 who alleged that signature of the defendant are forged one on the disputed agreement to sell dated 28.9.1999 and no earnest money was paid. DW4 Tara Chand as the stamp vendor had denied that one the stamp paper on which agreement to sell Ex.P2 was written the signature of defendant Beermati was not appended only the initial on his register are present against the issuance of that stamp paper. Same Singh DW5 was also examined Multan Singh DW6 Finger print expert was also examined by the appellant/defendant. It was not disputed and admitted fact that the appellant/defendant was owner in possession of the property in question and as such he was having competency of execute the agreement to sell.

The main issue as to whether the such agreement Ex.P-2 was entered into with the free consent of the defendant or not. The evidence of PW1 Satyavir Singh, PW2 Sat Parkash, PW3 Naresh Kataria Hand writing and finger print expert has successfully proved

that the agreement in question was entered into was with the free consent of the defendant. Thumb impression was also pertaining to the appellant/defendant. She had put her signature on the agreement to sell after understanding and admitting it to be correct. There was an entry regarding execution of that agreement with the register of PW1 Satyabir Singh Deed Writer. Therefore, the plaintiff have successfully proved on record that the agreement to sale Ex.D-2 bears the signature and thumb impression of the defendant as well as it was entered into with the free consent of the parties. The report of the Government laboratory, Madhuban is also on the case file but it has not been exhibited. Moreover, now the question is whether the plaintiff was present on the appointed date that is 31.3.2000 at the office of Registrar or not. The marking of presence at the Registrar office has itself proved that the readiness and willingness on the part of the plaintiff as per the agreement to sell Ex.P-2. Legal notice Ex.P-12 had also proved the claim of the plaintiff/respondent. All the objections as raised by learned counsel for the appellant has already been rightly and fairly decided by learned lower court.

As such, I find there is no illegality, impropriety in the impugned order and the learned lower court has rightly dismissed the suit of the plaintiff and as such the present appeal is dismissed with costs.”

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During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments rendered by the learned courts below. He also could not point out any question of law much less substantial question of law, 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

16.2.2017
Ak Sharma

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