

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-21.11.2017

RSA No.5331 of 2015(O&M)

Smt. Bala.

.....Appellant.

Versus

Sunder Singh.

.....Respondent.

AND

RSA No.5377 of 2015(O&M)

Smt. Bala.

.....Appellant.

Versus

Sunder Singh.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Sudhir Aggarwal, Advocate for
Appellant-Defendant (in both appeals).

Mr. Johan Kumar, Advocate for
respondent-plaintiff (in both appeals).

JASWANT SINGH, J.

This common order shall dispose of both the aforesaid two appeals as the same have arisen out of common judgment dated 8.7.2015 passed by Additional District Judge, Palwal whereby appeal of the plaintiff-Sunder Singh was allowed and the appeal of appellant-defendant-Smt. Bala was dismissed.

Respondent Sunder Singh filed a suit for specific performance,

which was decreed for alternative relief of recovery of Rs.20 lacs along with

interest by Additional Civil Judge(Sr. Divn.) Palwal vide judgment dated 11.05.2012. However, in appeal the suit filed by the respondent-plaintiff was allowed in *toto*, whereas the appeal of appellant for dismissing the suit in *toto* was dismissed by learned Additional District Judge Palwal.

Learned Counsel for the appellant-defendant has argued that plaintiff is not in possession and, therefore, in view of the provisions of Section 22 (1A) of the Specific Relief Act, 1963, the suit for specific performance in *toto* with possession could not be decreed in the absence of relief of possession. He has further argued that although there is a recital in the agreement to sell that a sum of Rs.20 lacs towards total sale consideration, has been held to be proved, however, a receipt of the same Ex.P-2 has not been proved, as neither the original was produced nor the secondary evidence was led.

On the other hand, learned Counsel for the respondent-plaintiff has argued that in the agreement to sell, as also in the plaint, it is specifically recited and pleaded that the possession has been handed over to the plaintiff, and therefore, mere argument of the counsel for appellant would not change the nature of the pleadings as also the evidence of the plaintiff (PW-3) and attesting witness Rajinder (PW-3). He has further argued that attesting witness-Rajinder Singh (PW-2) and the plaintiff (PW-3) have duly proved the agreement to sell Ex.P-1 wherein it is recited that the amount of Rs.20 lacs have been paid. Their oral evidence also proves the receipt of the same as Ex.P-2. Lastly he has argued that coupled with the fact that handwriting expert (PW-1) and the Deed Writer (PW-5) have not only corroborated the evidence was also belied the plea of the appellant-defendant (Smt. Bala) that the agreement to sell is a forged and fabricated

document and does not bear her thumb impression.

After hearing learned Counsel for the parties and perusing the paper book, this Court is of the considered view that the present appeals are devoid of any merit and deserves to be dismissed.

As far as the first argument raised by learned Counsel for the appellant is concerned, this Court is of the opinion that a perusal of the pleadings, evidence led by the parties as well as judgment passed by the Courts below would reveal that handing over of possession by defendant-appellant to respondent-plaintiff was never in dispute. Merely because the counsel for the respondent-Sunder Singh in the appeal had raised an argument that plaintiff was not in possession, would not make any difference as the argument raised by the pleader which is against the factual position cannot bind the party itself. It is evident from the agreement to sell that entire payment was made by the respondent-plaintiff to appellant-defendant and in lieu thereof, possession was handed over. In such circumstances provisions of Section 22 (1A) of the 1963 Act cannot be applied in the present case.

As far as the second argument is concerned this Court is of the opinion that the same is also without any merit. A perusal of the agreement to sell Ex.P-1 would show that Rs.20 lacs were paid to the appellant-defendant which has been duly recorded in the agreement to sell itself. The said agreement to sell has been proved on record by Rajinder Singh (PW-2) attesting witness and plaintiff himself as PW-3. Not only this handwriting expert (PW-1) and Deed Writer (PW-5) have also corroborated the version of the respondent/plaintiff that the agreement to sell was only executed and money was handed over. In such a situation even if the receipt Ex.P-2 is

ignored still in view of the contents of the agreement to sell which specifically states that Rs.20 lacs were given to the appellant-defendant, would not save the appellant from her liability to execute the sale deed.

It is an admitted fact that the respondent/plaintiff had denied the very execution of the agreement to sell itself by taking a categorical stand that no thumb mark was ever appended upon the agreement to sell in question. This fact has been found to be incorrect and against the record. In such a situation, the Appellate Court had rightly exercised the jurisdiction by granting the relief of specific performance as it is proved that in fact, defendant-appellant had not come to the Court with clean hands and was also not ready and willing to perform her part of the contract.

In view of the discussion above, no fault can be found in the findings recorded by the Courts below especially learned Appellate Court which has decreed the suit of the plaintiff/respondent in *toto*.

In view of the foregoing discussion, finding no merit in both the aforesaid appeals, the same are hereby dismissed.

(JASWANT SINGH)

JUDGE

November 21, 2017

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>