

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 113 of 2017 (O&M)

Date of decision : July 4, 2017

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Anita

.....Appellant

Versus

Ram Phal and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Brijender Kaushik, Advocate for the appellant.

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RITU BAHRI, J.

C.M No. 232-C of 2017

Prayer made in the application is for condonation of delay of 113 days in refiling the appeal.

For the reasons stated in the application, delay in refiling the appeal is condoned. C.M is allowed.

RSA No. 113 of 2017

The appellant Anita has filed this regular second appeal against the order dated 7.5.2016 passed by the Additional District Judge, Rohtak, whereby the appeal against the judgment and decree dated 30.11.2015 passed by the Civil Judge (Junior Division), Rohtak, was dismissed.

Briefly stated, the facts of the case are that the appellant-

defendant no.1, Anita who was owner in possession agreed to sell a house measuring 48 sq. yards which is constructed on eastern portion of plot no.4 Min (middle) total measuring 157.5 sq.yards which comprised of Rect. & Killa No.20/2/1, 1 Min (Northern) 9/2 and 10 situated at village Sunaria Kalan, Tehsil and District Rohtak to the respondent no.1-plaintiff vide agreement to sell dated 30.4.2007. The boundaries of the suit property are reflected in the opening para of the judgment passed by the trial Court. The appellant-defendant no.1 Anita had agreed to sell the suit property for a total sale consideration of ₹ 2.60 lacs and out of which, a sum of ₹2.25 lacs was received by her as earnest money. The sale deed was agreed to be executed and registered on or before 3.9.2007. The receipt of earnest money was also executed and thumb marked by appellant-defendant no.1. The period of execution and registration of sale deed was extended with mutual consent of appellant-defendant no.1 up to 4.7.2008. A writing to this effect was also made and the same was thumb marked by appellant-defendant no.1 in the presence of witnesses. However, on 4.7.2008 respondent no.1-plaintiff appeared before the Sub-Registrar, Rohtak to perform his part of the contract and remained present there up to office hours along with balance sale consideration and registration expenses. He waited for appellant-defendant no.1 but she did not turn up. She failed to perform her part of the contract, whereas the respondent no.1-plaintiff was ready and willing to perform his part of contract on 4.7.2008. His presence was duly marked before the sub-Registrar, Rohtak on 4.7.2008. Thereafter the respondent no.1-plaintiff approached appellant-defendant no.1 several times to perform her part of the contract, but she kept on delaying the matter on one pretext or the other. Accordingly, a legal notice dated 3.6.2011 was

sent to appellant-defendant no.1 but the same was neither replied nor needful was done.

Instead of getting the sale deed executed and registered in favour of the respondent no.1-plaintiff, appellant-defendant no.1 got the sale deed executed in favour of Santosh Kumar respondent no.2-defendant no.2 on 8.1.2008 qua the suit property. Aggrieved against this act, the respondent no.1-plaintiff filed a suit for possession of the suit property by way of specific performance of the agreement to sell dated 30.4.2007 and the declaration to the effect that the sale deed dated 8.1.2008 is illegal, null and void and not binding on the rights of the respondent no.1-plaintiff. Santosh Kumar, in whose favour, Anita appellant-defendant no.1 had transferred the suit property was allowed to be impleaded as a party on an application under Order 1 Rule 10 CPC moved by the respondent no.1-plaintiff.

Appellant-defendant No.1 had filed her written statement taking preliminary objections regarding maintainability, cause of action, locus standi, suit being time barred and hit by Section 23 of the Indian Contract Act 1872. On merits, it was pleaded that on 1.9.2007, the period of execution and registration of the sale deed with mutual consent of appellant-defendant no.1 was extended up to 4.1.2008 and not 4.7.2008 as alleged by the respondent no.1-plaintiff. The time for execution and registration of the sale deed was fixed for completion of transaction up to 3.9.2007 vide agreement to sell dated 30.4.2007 in the presence of witnesses except the witness Ram Avtar. On 1.9.2007, the agreement to sell was further extended up to 4.1.2008 vide the endorsement made on the agreement to sell. But later on, the said endorsement was materially altered

as 4.7.2008 in place of 4.1.2008 by the plaintiff-respondent no.1 in collusion with the deed writer by way of fraud.

The defendant no.2 had also filed his written statement taking various preliminary objections regarding maintainability, cause of action, misjoinder and non-joinder of necessary parties, locus standi and the suit being false, frivolous and baseless. On merits, it was pleaded that defendant no.2 had no knowledge about the alleged agreement to sell dated 30.4.2007. Defendant no.2 had purchased the suit property from appellant-defendant no.1 vide sale deed executed on 8.1.2008 and registered on 9.1.2008. It was also pleaded that defendant no.2 had further sold the suit property to one Kamlesh wife of Attar Singh vide agreement to sell dated 17.9.2009.

No replication was filed by the plaintiff-respondent no.1. On the basis of pleadings of the parties, the trial Court formulated the following issues vide order dated 1.6.2013:

1. Whether the plaintiff is entitled to possession of the suit property by way of specific performance of agreement to sell dated 30.4.2007? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the agreement to sell dated 30.4.2007 is illegal, null and void? OPD
4. Whether the suit of the plaintiff is time barred?OPD
5. Relief.

Vide judgment and decree dated 30.11.2015, the trial Court held that the agreement to sell dated 30.4.2007 was executed between the respondent no.1-plaintiff and defendant no.1-appellant for a total sale

consideration of ₹ 2.60 lacs and an amount of ₹ 2.25 lacs was received by appellant-defendant no.1 as earnest money. The remaining sales consideration was to be paid on the execution of the sale deed which was otherwise fixed on or before 3.9.2007. The trial Court also returned a finding of fact that on 1.9.2007, the execution and registration of the sale deed was extended up to 4.7.2008 with mutual consent of the parties. The sale deed No. 9261 dated 8.1.2008 got executed by appellant-defendant no.1 in favour of defendant no.2 was declared illegal null and void and not binding upon the rights of the plaintiff. Accordingly, suit of the plaintiff was decreed with no order as to costs.

Aggrieved with the judgment and decree passed by the trial Court, defendants preferred an appeal before the lower appellate Court i.e Additional District Judge, Rohtak which did not find any infirmity in the judgment and decree passed by the trial Court and dismissed the same vide judgment and decreed dated 7.5.2016.

In the aforesaid circumstances, the appellant-defendant has approached this Court by way of present regular second appeal.

The finding recorded by the both the Courts that date of execution and registration of the sale deed was extended up to 4.7.2008 is clearly established from Ex.P-3 and the sale deed executed in favour of Santosh Kumar was very doubtful. Santosh Kumar filed his written statement in the suit on 3.4.2013 and again during pendency of the suit, he sold the suit property to Smt. Kamlesh on 9.6.2014 ignoring the very principle of *lis pendens*. Hence, the plea that he was bona fide purchaser has rightly not been accepted by both the Courts below.

Against the order of the lower appellate Court, defendant no.2-

Santosh Kumar filed RSA No. 4219 of 2016 in this Court. A co-ordinate Bench of this Court observed that since the dispute regarding alteration of date from 4.1.2008 to 4.7.2008 being question of fact has duly been considered by both the Courts below, no substantial question of law arises for consideration in the regular second appeal and the same was dismissed on January 12, 2017.

The present appeal has been filed by defendant no.1 Anita. After going through the judgments passed by both the Courts below, and in view of all that has been discussed above, no ground is made out to interfere with the concurrent findings of facts recorded by the Courts below. Hence the present appeal is dismissed being devoid of any merit.

July 4, 2017
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No