

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

RSA No.2728 of 2017 (O&M)

Date of decision : 11.09.2017

Smt. Krishna Devi

...Appellant

Versus

Ramesh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harender Singh, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Defendant is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for possession by way of specific performance of the agreement to sell dated 12.02.2009. On the other hand, defendant totally denied the agreement to sell.

When defendant appeared in the witness-box, she admitted her thumb impression on the agreement to sell. She pleaded that originally the property belong to her husband and on the day, the agreement to sell was entered into, the property had not been mutated in her name, although it is admitted position on the record that her husband had died before the agreement to sell was entered into.

Both the Courts below after appreciating the evidence available on the file had recorded a finding of fact that the agreement to sell is proved.

Plaintiff has established that he was ready and willing to perform his part of the contract. Marginal witness of the agreement to sell, namely Jagdish Chander, has been examined.

I have heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has submitted that the price of the land agreed to be sold is much lower than the market value. He has further submitted that on the day the agreement to sell was entered into, the property was not mutated in her favour, therefore, agreement to sell is not valid.

I have considered the submission of the learned counsel. However, I do not find any force in the same. Inadequacy of the consideration is not a ground to deny the specific performance. The agreement to sell was entered into the year 2009. The agreement to sell is duly thumb-marked by defendant-appellant which is admitted. The agreement to sell is with respect to a small piece of land i.e. 1 kanal 17 marlas situated in a village. Even this 1 kanal 17 marlas land is a share in the joint khewat.

In these circumstances, I do not find any force in the submission of the learned counsel.

Next submission of the learned counsel for the appellant is that on the day the agreement to sell was entered into, the mutation of the land had not been sanctioned. Inheritance of the property does not remain in abeyance even for a second. The moment her husband died, she became

owner of the property. Once she was owner irrespective of the fact whether mutation was entered into or not, she was entitled to enter into an agreement to sell.

In view of the provision of Section 13 of the Specific Relief Act, 1963, even if she was not owner of the property and on the day agreement to sell was executed, she acquired the ownership subsequently then also the plaintiff was entitled to enforce the agreement to sell.

In these circumstances, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

11.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No