

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.3086 of 2017 (O&M)
Date of Decision: 11.07.2017**

Smt. Chandermukhi

... Appellant

Versus

Kartar Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

Mr. Amit Kumar Jain, Advocate,
for the caveator/respondent.

RAJIV NARAIN RAINA, J.

1. The appellant was the defendant in the suit for specific performance of an agreement to sell dated February 07, 2007. She has lost in both the Courts below. She assailed the agreement in the suit. However, the sale agreement has been held to be a valid contract enforceable in law. Due execution of the agreement was proved by the plaintiff appearing as his own witness and supported by the testimony of the marginal witnesses to the agreement, i.e, PW-2 Surender Singh Yadav and PW-3 Naveen Chauhan who appeared in the witness box, faced cross-examination and testified to its genuineness. The defendant appellant did not dispute her signatures/thumb impressions on the agreement. Her defence in the written statement was that her signatures/thumb impressions were obtained on blank papers by Naveen Chauhan who is her relative and thereby he committed fraud upon her by representing to her that her hand was required on the blank papers for

getting some mutation entered in her name.

2. The brief facts are that the appellant purchased the suit property on May 11, 2006 and became its absolute owner. Mutation was sanctioned in her favour on August 08, 2006 and thereby the residential plot measuring 7 Marlas situated within the revenue estate of Village Manesar, Gurugram stood transferred in her name in the record of rights.

3. Thereafter, she entered into an oral agreement with the plaintiff agreeing on February 07, 2007 to sell the suit plot for a total consideration of ₹14,91,000/- when earnest money in a sum of ₹2 lakh was passed on to the vendor appellant. A week later the oral agreement was reduced into writing. On the date orally fixed for execution of sale deed the defendant-appellant excused herself alleging that she was not feeling well and had been advised rest by her doctor. Time passed till the defendant executed receipt Ex.P-2 on receiving the balance consideration amount of ₹12,91,000/- paid on May 15, 2010. The receipt was executed in the presence of witnesses and it is mentioned therein that she had handed over the possession of the suit property to the plaintiff respondent after receiving full and final payment. She also executed an affidavit Ex.DW-1/A in which she did not allege any falsity or duress in signing the receipt Ex.P-2. The document has been proved by the plaintiff in evidence by its marginal witnesses. Merely because the scribe of PW-1 and PW-2 was not examined would be irrelevant. The suit was brought one day short of expiry of limitation and the Court found that plea of bar of limitation set up by the defendant appellant was devoid of merit since balance sale consideration was paid on May 15, 2010 and the suit was filed on May 14, 2013, that is,

within three years.

4. The First Appellate Court correctly held that when no specific date is fixed for performance of contract, it is the date of refusal which is to be taken into account for calculating the limitation period as provided by Article 54 of the Limitation Act, 1963. No challenge was laid to the receipt Ex.P-2 by the defendant in her evidence or in the cross-examination of the plaintiff. The Lower Appellate Court observed that when a document is signed or thumb-marked by a person, a strong presumption would arise that he/she signed it after reading and understanding its contents. This presumption flows from Section 114 of the Indian Evidence Act which lays down that the Court may presume existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and in public and private business in their relation to the facts of the particular case.

5. The plea that her signatures/thumb impressions were obtained by practicing fraud by the appellant's relative PW-3 Naveen Chauhan was rejected by noticing the settled law that a plea of fraud in civil cases has to be proved like a charge in a criminal case and, therefore, to establish fraud strict evidence is required to prove the plea. The Courts below noticed that the agreement Ex.P-1 reveals that they are not one but as many as five signatures of the defendant along with her thumb impressions on the document executed between the parties.

6. In short, the agreement and receipt were proved by unimpeachable evidence that there were no doubts left between the parties and the entire sale consideration had passed to the defendant at the time of

execution of receipt Ex.P-2 and the plea of fraud set up by the defendant was correctly rejected by the Court and in this manner the essential ingredients required for obtaining a decree of possession by way of specific performance were satisfied; then I have no reason to disturb the findings of fact recorded by the courts below in second appeal and would affirm the reasoning in the judgment in appeal and hold that the suit was properly decreed for good and sufficient reasons duly recorded in the judgment after appreciating the evidence produced by the parties.

7. No question of law, much less substantial, arises in this appeal on facts established on record.

8. After hearing the learned counsel I find there is no substance in this appeal and the same is hereby ordered to be dismissed with costs in all the courts.

(RAJIV NARAIN RAINA)
JUDGE

11.07.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*