

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.3376 of 2017

Date of decision:2.8.2017

Smt.Bedo Devi

...Appellant

Versus

Lila Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.S.K.Chauhan, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful plaintiff is in the regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for possession by way of specific performance was dismissed by the learned trial court, vide its impugned judgment and decree dated 26.8.2016 and her first appeal was partly allowed by the learned District Judge, vide his impugned judgment and decree dated 22.11.2016.

Brief facts of the case, as noticed by the learned trial Court in para 2 of its impugned judgment, are that defendant executed an agreement to sell plot No.198, M.C. Colony, Bhiwani, which measures 52 square yard vide an agreement to sell dated 3.12.2003. As per the agreement in question, the total sale amount of Rs.32,000/- was paid to the defendant in the presence of witnesses Sadhu Singh and Brij Bhushan, receipt of which money was duly acknowledged. As per the agreement in question, the defendant is bound to execute and get register the sale deed in respect of the suit property in favour of the plaintiff. The defendant did not turn up to

execute the requisite sale deed despite service of legal notice dated 17.12.2012 through Advocate Shri Dharambir Lamba.

Defendant was put to notice. However, nobody put appearance and defendant was proceeded against ex parte. Plaintiff-appellant produced her ex parte evidence, however, she failed to prove her case. After hearing the learned counsel for the plaintiff-appellant, the learned trial court came to the conclusion that since the agreement in question was unenforceable and the suit, being bad for non joinder of necessary party, was bound to fail. Accordingly, suit of the plaintiff was dismissed by the learned trial court, vide its impugned judgment and decree dated 26.8.2016. Feeling aggrieved, plaintiff filed her first appeal, which was partly allowed, by the learned first appellate court by passing the impugned judgment and decree dated 22.11.2016, granting alternative relief of refund of earnest money along with interest. Hence this regular second appeal, at the hands of plaintiff.

Heard learned counsel for the appellant.

It is a matter of record that the suit property was belonging to the Municipal Council, who was not impleaded as party defendant by the plaintiff for the reasons best known to her. Plaintiff also concealed the material fact from the notice of the learned courts below. Although, the plaintiff claimed to have paid the entire amount of sale consideration in the year 2003, yet for a period of long 9 years neither she was interested for taking the possession of the suit land nor approached the learned court of competent jurisdiction at an earlier point of time.

It has also gone totally unexplained as to why plaintiff did not implead the Municipal Council as party-defendant, in spite of the fact that Municipal Council was the true owner of the suit land. Having said that, this

Court feels no hesitation to conclude that both the learned courts below rightly declined the primary relief of specific performance because the agreement to sell was unenforceable and therefore, the impugned judgments and decrees deserve to be upheld.

When the learned counsel for the appellant was asked to refer to any relevant material or evidence available on record in favour of the appellant, he had no answer and rightly so, it being a matter of record. In such a situation, plaintiff-appellant was bound to fail. That is what has been held by the learned courts below. Under these undisputed facts and circumstances of the case, it can be safely concluded that both the 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 also.

It has also gone undisputed on record that the Municipal Council did not execute any conveyance deed in favour of defendant. In this view of the matter, it becomes crystal clear that defendant was not the owner. Ownership of the suit land was with the Municipal Council. Once the title of the defendant was defective in nature, he will not be in a position to convey any better title in favour of the appellant-plaintiff. Under such circumstances, no fault can be found with the findings recorded by the learned courts below in their respective impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court in **Keshavlal Lallubhai Patel and others Vs. Lalbhai Trikumlal Mills Ltd., 1958 AIR (SC) 512, Harjit Kaur (D) through LRs Vs. Jangir**

Singh (D) through LRs and others, 2015 (52) RCR (Civil) 368 (P&H)
and **RSA No.3796 of 2015 (Inderpal Singh Vs. Jugal Kishore and another)**, decided on 13.7.2017.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in para 8 of its impugned judgment, which deserve to be noticed here, read as under:-

“A perusal of the evidence shows that there is no Conveyance Deed or any document of title in favour of the Respondent. In view of this, I am of the considered view that the Trial Court was justified in not decreeing the suit of the Appellant. However, I am of the considered view that the Trial Court should have passed the decree for the refund of the earnest money in favour of the Appellant. In view of this, the appeal is partly allowed with costs. The impugned judgment is set aside. A decree for a sum of 32,000/- with interest @9% per annum from the date of the □ suit till the date of decree of the trial court and @6% per annum from the date of the decree of the trial court till the date of payment is passed in favour of the Appellant, with costs.”

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286* and *Santosh Hazari Versus 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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

2.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No