

**RSA No. 6275 of 2014(O&M)**

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

**RSA No. 6275 of 2014(O&M)  
Date of Decision: 14.7.2017**

Manoj Kumar

.....Appellant

Vs.

Bimla Devi

.....Respondent

**CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present : Mr. Lalit K. Gupta, Advocate  
for the appellant.

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**RAMESHWAR SINGH MALIK J. (ORAL)**

Unsuccessful plaintiff is in regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for possession by way of specific performance of agreement to sell dated 23.11.2007 and supplementary agreement to sell dated 3.9.2008 was dismissed, as he failed to prove his pleaded case.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that the appellant-plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 23.11.2007 and subsequent agreement to sell dated 3.9.2008 and the consequential relief of permanent injunction was also sought. It was pleaded by the plaintiff that the defendant was the owner of suit property, as detailed in the head-note of the plaint which she had purchased vide sale deed dated 25.4.2005. The defendant entered into an agreement to sell dated

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23.11.2007 for the sale of suit property for a sale consideration of ₹2,00,000/- and the plaintiff paid ₹1,15,000/- to the defendant as earnest money and the last date for execution and registration to sale deed was fixed as 23.10.2008.

It was assured by the defendant that the execution and registration of property in question shall be done in time by taking NOC from the competent authority for execution and registration of sale deed. On 2.9.2008, defendant came to the plaintiff and requested the plaintiff to pay the balance sale consideration by showing his need and also stated that Chameli Devi is her relative who need the house in question for some time and was also ready to pay rent and the plaintiff stated that he was ready to pay the balance sale consideration and wanted to take possession of entire house in question from defendant and then would give the house in question on rent to Chameli Devi. On 3.9.2008, plaintiff paid the entire balance amount of ₹85,000/- to the defendant and the defendant handed over the possession of the entire house in question and a supplementary agreement had been executed between the parties to the suit. A rent agreement was also executed in between Chameli Devi and plaintiff and plaintiff became landlord of Chameli Devi. Said Chameli Devi paid rent for eight months only and thereafter, stopped paying the rent and also vacated the property and handed over the possession to the defendant. The plaintiff requested the defendant to execute the sale in his favour but the defendant failed to execute the sale deed in spite of legal notice

Having been put to notice, defendant put appearance and filed her contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial court

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framed the following issues:-

1. Whether the plaintiff is entitled to a decree for possession by way of specific performance of agreement to sell dated 23.11.2007 and supplementary agreement to sell dated 3.9.2008 in respect of the suit property detailed in the head-note of the plaint, as prayed for?OPP
2. Whether the plaintiff was/is always ready and willing to perform his part of the contract?OPP
3. Whether the suit of the plaintiff is not maintainable in the present form?OPD
4. Whether the plaintiffs have not come to the court with clean hands and have suppressed the true and material facts?OPD
5. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has failed to prove his case. In the absence of sufficient and cogent evidence in favour of the plaintiff, learned trial court dismissed the suit of the plaintiff for possession by way of specific performance of the agreement to sell, vide impugned judgment and decree dated 3.9.2013. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 30.10.2014. Hence this regular second appeal at the hands of plaintiff.

Heard learned counsel for the appellant.

It has gone undisputed before this Court that initially, parties allegedly entered into an agreement to sell dated 1.5.2007 regarding suit

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property for an amount of ₹1,50,000/-. Suit properly alleged to have been agreed to be sold by the defendant, was her only residential house. It is also not in dispute that none of the parties acted upon the abovesaid agreement to sell dated 1.5.2007. It has also come on record that they further entered into an agreement to sell dated 23.11.2007 qua the same property but for an amount of ₹2 lacs. Thereafter, alleged supplementary agreement to sell dated 3.9.2008 was also executed between the parties. Out of total sale consideration of ₹2 lacs, plaintiff-appellant claimed to have paid ₹1,15,000/- to the defendant-respondent on 23.11.2007 and remaining amount of ₹ 85,000/- was alleged to be paid to the respondent on 3.9.2008 at the time of alleged supplementary agreement to sell, fixing the target date for getting the sale deed registered as 23.10.2008.

Admittedly, the sale deed was not executed on 23.10.2008 and as per the contentions raised by the learned counsel for the appellant, plaintiff-appellant kept on issuing notices to the defendant, requesting her to execute the sale deed and finally, he filed his suit as late as on 20.3.2010. It was also contented on behalf of the appellant that appellant was ready and willing to perform his part of contract and he remained present in the office of Sub-Registrar on 23.10.2008. However, it was defendant who did not come forward.

Be that as it may, it is the settled proposition of law that relief of specific performance being a discretionary relief, it is always not necessary to grant such relief even if the agreement to sell is found to have been proved. It is so said, because the parliament itself has carved out some exceptions in this regard under Section 20 of the Specific Relief Act, 1961 ('Act of 1961' for short). Present one is a case which certainly falls within

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the ambit of more than one exceptions carved out in Section 20 of the Act of 1961.

It is a small dwelling unit on a piece of land measuring 40 sq. yards, which was the only residential house of the defendant. She was a semi literate lady. In fact, appellant being the plaintiff, onus was on him to prove his pleaded case but he failed to do so. It was specifically pleaded case of the defendant-respondent that her signatures were taken on some typed papers and as per her understanding, signatures were taken for advancing some loan in her favour, as she never intended to sell her only residential house in favour of the appellant-defendant. Plaintiff-appellant had the opportunity to rebut such kind of evidence produced by the defendant but he did not produce any attesting witness in the witness box, for the reasons best known to him. Execution of the agreement to sell was specifically denied by the defendant. Under these circumstances, a heavy onus was on the plaintiff to prove his case, by producing Handwriting and Fingerprint Expert but he failed to do so, as well.

Even if signatures of the defendant on the agreement to sell are admitted to be correctly put, however, only for the sake of argument, even then contents thereof were never read over to her, nor she was made to understand what was the object and purpose of the documents, she had signed. Further, when the initial agreement to sell dated 1.5.2007 (Ex.P-1) was executed between the parties, the target date for registration of the sale deed was fixed as 30.5.2008. Once the plaintiff-appellant was placing this document on record Ex.P1, it was least expected from him to get it referred in the later agreement to sell dated 23.11.2007, but there was not even the passing reference of the first agreement to sell (Ex.P-1) in the later

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agreement to sell.

A close perusal of the evidence available on record has made it clear that defendant entered into some loan transaction with the plaintiff, but the plaintiff, taking undue advantage of his dominating position, converted it into an agreement to sell, with a view to grab the suit property, which was the only residential house of the defendant. In this view of the matter, it can be safely concluded that it was a clear case of undue hardship against the defendant-respondent, she being a rustic and semi literate woman, having no other residential house for her and her family members. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

Before arriving at a judicious conclusion, learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in later part of the impugned judgment, which deserve to be noticed here, read as under:-

*“-It is further seen that even the plaintiff admits that the original documents of the property of defendants are in his possession and during the execution of the agreement to sell there was no need for the defendant to hand over her original documents to the plaintiff and such need only arise in case of loan. For this reliance can be placed upon **Sarda Vs. Divakara, 2013 (1) Civil Court Cases 536**, where it was held that:*

*“Handing over original documents at the*

*time of execution of agreement to sell -Normally, original documents are given to purchaser only at the time the sale deed is executed- it is a circumstance which indicate that the transaction was not one for purchase of the suit property but a money transaction.*

*There is no evidence on file from any witness that the agreement to sell was read over and explained to the plaintiff, so as to make her understand that what she was executing was in fact agreement to sell. Since the defendant denied having executed the same and under such circumstances, the scribe was the best person who could have explained the same but in the present case, the scribe has not been examined and in similar circumstances, it was held in **Richhpal Singh Vs. Sandhura Singh, 2013 (3) Civil Court Cases, 242**, that:*

*“Only scribe could depose about the contents of the agreement having been read over and explain to the executant-As the best evidence was withheld despite it being available, courts below were justified in drawing the adverse inference against the plaintiff-Dismissal of suit-no interference.”*

*The defendant has also denied having executed the agreement to sell and this denial would include thumb impression and signatures on the agreement and the plaintiff was required to independently prove the said agreement to sell and in similar circumstances, it was held in **Harvel Singh VS. Ranjit Singh & Anr., 2012 (4) Civil Court Cases 393**, where it was held that;*

*“Execution of agreement denied- This denial includes denial of alleged thumb impression on the agreement-Testimony of scribe that he does not*

*know the parties personally-Plaintiff failed to examine any attesting witness-Finer print expert not examined-Held, plaintiff failed to prove the identity of executant of the agreement and failed to prove that it was executed by defendant.”*

*The plaintiff to seek the relief of specific performance was required to come clean in the court and not conceal any material fact but in the present case, the above discussed circumstances clearly show that the plaintiff tried to conceal material facts from the court.*

*Even a perusal of the testimony of the plaintiff is essential to be looked into where the plaintiff admits that an agreement to sell for one property is only scribed once but in the present case the plaintiff has come up with two agreements to sell and third was brought on record by the defendant. The plaintiff admitted that Chameli Devi to whom he said to have given the defendant's house on rent already has a house of her own and as such it is not explained as to why said Chameli Devi would require a small property on rent when she herself has a sufficient house to reside in. The plaintiff also admitted not giving any rent receipt to Chameli Devi. He also stated not being aware as to where defendant Bimla was residing if as stated by plaintiff Chameli was residing in the house of Bimla alleged to have been agreed to be purchased by the plaintiff.*

*The contention of the defendant and her admission regarding her signatures being present on the documents Ex.P1 and Ex.P2, therefore, would not in itself be suffice to prove that the defendant had entered into an agreement to sell with the plaintiff and if the defendant failed to get lodged any criminal case against the*

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*plaintiff, then even in such circumstances it does not ipso-facto go to prove the execution of the agreement to sell by the defendant in favour of the plaintiff.”*

So far as the judgments relied upon by the learned counsel for the appellant in **M/S Grasim Industries Ltd and another Vs. M/s Agarwal Steel, 2010 (1) SCC 83 (SC); Jeet Singh Vs. Bahadur Singh, 2009 (4) RCR (Civil) 196, (P&H); Pavittar Singh Vs. Swaran Singh (RSA No. 1466 of 2013, date of decision 30.10.2015 (P&H) and Hodil Singh Vs. Bhagwant Singh (deceased) by Lrs, 2010 (2) CivCC 608 (Allahabad High Court)** are concerned, there is no dispute about the law laid down and observations made therein. However, on a careful perusal of the cited judgments, none of them has been found to be of any help to the appellant, being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is

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sine qua non for entertaining a 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 regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. 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 present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

14.7.2017  
*Ak Sharma*

**(RAMESHWAR SINGH MALIK)**  
**JUDGE**

*Whether speaking/reasoned Yes/No*  
*Whether reportable: Yes/No*