

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

**RSA No. 469 of 2017 (O&M)
Decided on: 04.08.2017**

Smt. Uma Sharma

.....Appellant

versus

Smt. Vidya Wati and Ors.

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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

Mr. Ashok Kumar Khubbar, Advocate
for respondent No.1.

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by the appellant-plaintiff in a suit for specific performance. This suit was dismissed and her appeal was also dismissed. Now she is challenging the concurrent findings recorded by the Courts below.

Succinctly, the facts of this case as pleaded are that the defendants No.1 and 2 are owners in possession of the suit property. They are alleged to have entered into an agreement to sell in favour of the plaintiff vide the stated agreement dated 20.11.1998 for a sale consideration of Rs.30,000/-. As per the claim of the plaintiff, Rs.5000/- was paid as earnest money against the receipt. The target date for execution of the sale deed was fixed to be 24.04.1999. However, the sale deed could not be got

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executed on this date. Therefore, this date was extended to 20.08.1999. It is the claim of the plaintiff that on 17.06.1999 Rs.10,000/- were paid and the date of execution of the sale deed was extended to 20.08.1999 as state above. However, again sale deed could not be got executed on 20.08.1999. On the next day i.e. 21.08.1999 some part of consideration money was again paid and date was extended to 20.10.1999. Once again, no sale deed could be got executed on 20.10.1999. After a period of about 8 months the agreement was, statedly, again extended on 03.07.2000 and the date of execution of the sale deed was fixed as 21.09.2004. As per the pleadings when the defendants did not come present to get the sale deed executed on this date, the plaintiff filed a suit on 17.01.2007.

Defendant No.1, while filing written statement, denied having entered into any contract with the plaintiff. On the contrary, she pleaded that she is an illiterate lady and she does not even put her signatures on the documents. She rather puts her thumb-impression. Likewise, defendant No.2 also denied having entered into an agreement to sell with the plaintiff.

The parties led their evidence. After hearing the parties and appreciating the evidence the trial Court came to the conclusion that the plaintiff failed to prove the agreement as per the requirements of law and therefore, he is not entitled to specific performance of the agreement. Aggrieved of that judgment and decree of the trial Court the present appellant filed an appeal before the lower Appellate Court. However, before the lower Appellate Court also she met the same fate. The lower Appellate Court also upheld the findings of the trial Court and by appreciating the evidence, it is recorded by the lower Appellate Court that defendants in their written statement have specifically denied their

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signatures on the agreement to sell and the receipts and the extensions thereof. In view of this situation, it was for the appellant-plaintiff to prove their signatures by getting them compared with the admitted signatures. However, the plaintiff failed to discharge her duty. Therefore, as per the findings recorded by the lower Appellate Court, there is nothing on record to substantiate the plea of the plaintiff, that the agreement was entered into between the parties. Besides this, the statement of the attesting witness has also been appreciated by the lower Appellate Court and it is recorded that he has denied being present on the spot when the agreement was written. Moreover, even the scribe of the agreement to sell has not been examined; nor the register of stamp vendor has been summoned to prove the factum of purchase of stamp paper on which the alleged agreement to sell is scribed.

Having heard the learned counsel for the parties and perusing the record, it is clear that the plaintiff has miserably failed to prove the agreement to sell and therefore, both the Courts below have rightly recorded the findings against her. Once the defendants had denied the signatures on the agreement to sell it was the bounden duty upon the plaintiff to prove the same by, at least, getting the signatures on the agreement to sell compared with some admitted signatures. However, no such step was taken by her.

Learned counsel for the appellant has stated that the husband of defendant No.2, who appeared as witness in the Court having power of attorney of defendant No.2, admitted the possession of the plaintiff and therefore, the presumption would be in favour of the agreement to sell. However, this submission of the learned counsel for the appellant also does not carry any weight. Even if possession is admitted by the attorney of the defendants, that also does not prove the factum of entering into the

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agreement to sell by the defendants themselves. The possession, if any, could be legal or illegal or for reasons totally strange to the agreement.

One more fact deserves to be noticed in this case that when the date of execution of the sale deed was extended to 20.08.1999, no sale deed was got executed by the plaintiff. Therefore, the agreement, even if it is presumed to be valid, outlived its legality on this date. The plaintiff claims to have got date for execution of the sale deed extended on the next day, i.e. on 21.08.1999 and the target date was decided to be 20.10.1999. This would be a novation of contract in terms of Section 62 of the Contract Act discharging the earlier contract. For this renewed contract fresh consideration would be required for a valid agreement to come into being. However, it is not even the contention or pleading of the plaintiff that in this new agreement any extra consideration was paid to the defendants. She only claimed to have made some payment as part of the earlier agreement, which was already stood extinguished on 20.08.1999. Same remained the situation on 20.10.1999 also. The plaintiff did not get the sale deed executed on this date also. Nor any extension of this date was sought by her for a long time. As per the pleadings of the plaintiff herself she got the alleged extension done on 03.07.2000, i.e., after about 8 months of the previous target date. Again it is not the pleading or contentions of the appellant-plaintiff that for renewal of this contract any consideration was paid by her. Again, she claims to have made payment of the part of earlier consideration. This does not amount to proper renovation of the contract. Again the agreement lost its validity on 20.10.1999. Hence, after this date unless the contract is renewed with consideration, the plaintiff cannot claim the specific performance of the original agreement. Furthermore in all these extensions

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the plaintiff does not even claim to have paid any money to the defendants, the alleged executant of the agreement to sell. Rather her stand is that the money was paid to the husband of the defendant No.1. Even if that be so, that does not bind the defendant No.1 or defendant No.2 because he was not a party to the agreement, nor did he have the title to the property in question. There was no privity of contract between the husband of defendant No.1 and defendant No.2 or defendant No.7 or the plaintiff qua the agreement to sell originally alleged against the defendants.

Therefore, in view of the above situation there is no infirmity in the findings recorded by the Courts below.

No further arguments was raised.

In view of the above, the present appeal is dismissed.

4th August, 2017
Manju

[RAJBIR SEHRAWAT]
JUDGE

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