

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

RSA No.1533 of 2016 (O&M)

Date of Decision: 23.10.2018

Kanta Rani @ Bhushi

... Appellant

Versus

Ashok Kumar

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. A.S.Manaise, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.

Plaintiff Ashok Kumar filed a suit for specific performance of an agreement dated 15.09.2011 in respect of the suit property against defendant Kanta Rani. Suit was decreed by the trial Court on 03.01.2015. An appeal preferred by the defendant has been dismissed vide judgment dated 20.08.2015 passed by the Learned Additional District Judge, Gurdaspur thereby affirming the judgment and decree of the trial Court.

Resultantly, defendant/appellant is in second appeal before this Court.

Briefly, it may be noticed that the suit was filed by the plaintiff/respondent for specific performance of an agreement dated 15.09.2011 in respect of property having plinth area of 01 marla approximately. As per agreement to sell, the total sale consideration was fixed as Rs.2,80,000/-and Rs.1 lakh was entrusted towards earnest money. The target date for execution and registration of the sale deed was fixed as 15.01.2012. Case of

the plaintiff/respondent was that he was always ready and willing to perform his part of the contract and 15.01.2012 being a holiday i.e. Sunday, he went to the Tehsil Office, Batala on the following day i.e. 16.01.2012 with the balance sale consideration amount but the defendant did not come present. A legal notice was served upon the defendant to get the sale deed executed and thereafter the suit for specific performance had been filed. Upon notice, a written statement was filed by the defendant setting up a case of denial. Defendant denied the receiving of Rs.1 lakh as earnest money. It was stated that she never agreed to sell the suit property, defendant was an illiterate lady and her thumb impressions have been taken on blank papers with the intention to grab her property.

As has been noticed hereinabove, suit of the plaintiff was decreed for specific performance of the agreement to sell dated 15.09.2011 and even the appeal preferred by the defendant has been dismissed by the Lower Appellate Court.

Learned counsel representing the appellant has argued that the Courts below have proceeded on conjectures and surmises and have returned findings as regards readiness and willingness on the part of the plaintiff/respondent without appreciating the evidence adduced on record. Further argued that the appellant was actually working as a domestic help in the house of the respondent/plaintiff and by taking advantage of such circumstances, a forged and fabricated agreement to sell had been set up. Further argued that the agreement to sell had not

been scribed by a regular deed writer and on the strength of such agreement the suit ought not to be decreed.

Having heard counsel for the appellant at length, this Court is of the considered view that there is no merit in the appeal and the same deserves to be dismissed.

The plaintiff/respondent had adduced the original agreement to sell Ex.P-1 dated 15.09.2011 and which was duly proved by examining the attesting witnesses. Ex.P-2 was the affidavit dated 16.01.2012 reflecting the attendance of the respondent before the Executive Magistrate on the date fixed for execution of the sale deed. Thereafter, even a legal notice had been sent by post dated 10.02.2012 Ex.P-3 and the postal receipts of which was adduced as Ex.P-4. The suit for specific performance thereafter was instituted on 15.03.2012 and without any delay.

The sequence of facts enumerated hereinabove taken collectively clearly show readiness and willingness on the part of the plaintiff/respondent to perform his part of the contract.

Even though appellant in the written statement filed in response to the suit had set up a case of denial as regards the agreement to sell having been entered into, but strangely the legal notice Ex.P-3 dated 10.02.2012 that had been served by the plaintiff/respondent had been responded to in terms of reply dated 24.02.2012 Ex.P-5 in which it was stated as follows in para 2.

“It is incorrect that your client was ready to perform his part of agreement. Actually your client never approached my client for sale deed and rather my client was ready to perform her part of

agreement, but as your client did not come present for execution of sale deed, hence my client is not bound by said agreement and as decided in the agreement, your client can not claim back the advance/earnest money."

The contents of the reply to the legal notice at Ex.P-5 dated 24.02.2012 are not disputed by counsel for the appellant. It is a virtual admission of the agreement to sell having been entered into.

Appellant herein had set up contradictory pleas before the Courts below. Even if the stand of the appellant is to be noticed as regards fraud in setting up an agreement to sell still onus was upon her to substantiate the plea of forgery and conspiracy. No evidence to substantiate such plea had been adduced by the appellant herein.

In view of the discussion hereinabove, no basis for interference is warranted.

Appeal does not raise any question of law.

Dismissed.

23.10.2018

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes
No