

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

RSA No.4935 of 2013

Smt Kishno Bai

...Appellant

Versus

Gian Singh and Ors.

....Respondents

Date of Order: 15.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Davinder Singh Khurana, Advocate for
Mr. Hemender Goswami, Advocate for the appellant.

Mr. R.K. Kakkar, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

Defendant-appellant is in second appeal aggrieved of the judgment and decree of reversal dated 03.8.2013 passed by learned Addl. District Judge, Ferozepur vide which the appeal filed by the plaintiffs against the judgment and decree dated 18.5.2011 passed by Addl. Civil Judge (Sr. Division), dismissing the suit of the plaintiffs, has been accepted.

Plaintiffs-respondents instituted the suit seeking specific performance of agreement to sell dated 10.11.2004, which was executed by defendant in their favour regarding land measuring 22 kanal 6 marlas falling in the revenue estate of Chak Bajida as detailed in the head note of the plaint at the rate of Rs.1,20,000/- per acre and a sum of Rs.1,50,000/- on account of earnest money was received by the defendant. The stipulated date for execution and registration of the sale deed was 15.11.2005. It was alleged that the defendant, on 17.6.2005 requested the plaintiffs to pay further earnest money to her in order to fulfil her domestic needs. The

plaintiffs agreed to pay another sum of Rs.1,00,000/- as earnest money to the defendant and writing to that effect was reduced into writing at the back of first page of the agreement in the presence of marginal witnesses. In all, the defendant received a sum of Rs.2,50,000/- but still did not come forward to execute the sale deed, as a result the present suit was preferred.

Upon notice, the defendant appeared and contested the suit by filing written statement. She took the pleas of locus standi, cause of action and concealment of material facts besides denying the agreement to sell stating that it was a forged and fabricated document. In fact no agreement to sell was entered into between the parties as the price of the property, at the time of execution of alleged agreement to sell was Rs.5 lacs per acre.

From the pleadings of parties, the trial Court framed as many as seven issues including the Relief.

In order to prove their case, plaintiffs examined PW1-Gurmit Singh, Scribe of the agreement to sell, PW2 Raj Kumari, Registration, Clerk from the office of Sub Registrar, Jalalabad, PW3-Joginder Singh, Stamp vendor who sold that stamp papers, PW4-Balwant Singh, PW5-Gian Singh (plaintiff No.1) and PW6-Mal Singh.

On the other hand, defendants examined as many as three witnesses and brought on record documents Ex.D1 to Ex.D12.

On the basis of preponderance of evidence, the trial Court dismissed the suit on the ground that the agreement to sell was not registered and PW3-Stamp vendor in his lengthy cross examination had failed to establish the availability of that stamp papers. In the appeal preferred by the plaintiffs, the lower Appellate Court set aside the findings of the trial Court and decreed the suit.

Learned counsel for the appellant submitted that the lower Appellate Court has committed grave error in reversing a well reasoned judgment passed by the trial Court, for, the agreement to sell required registration. Even the Scribe was not having valid licence. The respondents-plaintiffs exploited the faith of the appellant and got her thumb impressions on blank stamp papers. The testimonies of the bank official prove that the plaintiffs had not taken any loan from the Bank, therefore, the respondents-plaintiffs failed to prove that the alleged earnest money was ever given to the appellant.

Per contra, learned counsel for the respondents-plaintiffs submitted that the lower Appellate Court being the last court of law and facts has correctly re-appreciated the evidence by giving cogent reasons in reversing the findings of the trial Court, for, the agreement to sell has been proved from the testimonies of the witnesses. He submitted that the defendant-appellant has not been able to lead any evidence to belie his signatures on the agreement, thus prayed for dismissal of the present appeal.

After hearing learned counsel for the parties and appraising the paper book, I find no force and merit in the submissions made by learned counsel for the appellant, for, in the light of amended provisions of Registration Act, it is crystal clear that the agreement to sell arrived at between the parties for sale and purchase of any land does not require registration. There is no requirement that the Scribe has to have a valid licence for the purpose. Even the parties on their own can put terms and conditions with regard to sale and purchase of the land.

It has come on record that the plaintiffs marked their presence on the target date but the appellant did not come forward. Moreover, the

appellant-defendant could not take plea qua readiness and willingness since such plea was available to the defendant only in case where the agreement to sell was admitted. Such a view has been derived from the judgment of this Court in **Lal Chand Vs. Tek Chand 2013 (5) RCR (Civil) 104** and **Tara Singh Vs. Lakhwinder Kumar & Ors 2011(1) RCR (Civil) 130**.

In view of aforesaid discussion, judgment and decree of the lower Appellate Court does not suffer from perversity or fallacy, much less, no substantial question of law arises for determination.

Dismissed.

May 15, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No