

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

RSA No.1458 of 2015 (O&M)

Date of decision : 14.03.2018

Saroj Devi

...Appellant

Versus

Matadeen

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S. Sangwan, Advocate for the appellant.

Mr. Manoj K. Tanwar, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The defendant-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below decreeing the suit for possession by way of specific performance of the agreements to sell dated 06.02.1995 Ex.P1 and 30.05.1995 Ex.P2 with respect to the plot measuring 15 marlas.

The defendant contested the suit and pleaded that she has not affixed the thumb impressions and signatures on any document. She pleaded that she is a '*PARDA NASI*' lady and her thumb impressions obtained on the agreements to sell, are result of fraud. She further stated that she never affixed any thumb-impressions on any agreement to sell while having knowledge regarding its repercussions.

Learned trial Court after appreciating the evidence available on

the file, decreed the suit after noticing that the execution of the agreement to sell has been proved by Gurdayal Sharma, Deed Writer, PW1, Stamp Vendor Bhoop Singh, PW2, Dalip Singh, the attesting witness PW3 and Om Parkash, PW4. The plaintiff himself has appeared in the witness-box as PW5.

An appeal filed before the First Appellate Court was also dismissed after re-appreciating the evidence available on the file.

Learned counsel for the appellant has submitted that while issuing notice of motion, this Court had directed the appellant to deposit ₹1,50,570/- i.e. the amount of earnest money plus interest in order to show his bona fide intention, vide order dated 09.02.2016 and the appellant had brought a bank draft of the aforesaid amount which was taken on record. He submits that in view of the aforesaid order, only refund can be ordered. He has further submitted that the Courts below have not exercised their discretion in accordance with the provision of Section 20 of the Specific Relief Act, 1963. He submitted that it is part of her residential house and, therefore, the decree for the specific performance should not have been granted.

On the other hand, learned counsel for the respondent has vehemently contended that the stand of the defendant has not been fair. She initially filed the written statement denying the execution of the agreement to sell and then pleaded fraud. Once, she has failed to prove her stand taken in the pleadings, she can be permitted to set up a new case in this Court. He submits that the property in question is not part of the residential house but is in the shape of the plot which adjoins the residential house, used for

tethering the cattles.

This Court has considered the arguments of the learned counsel for the parties and with their able assistance gone through the judgments passed by both the Courts below.

The order dated 09.02.2016 passed by this Court, is extracted as under:-

“To show the bona fide of the appellant, learned counsel for the appellant has brought a bank draft No.485399, dated 04.02.2016 amounting to Rs.1,50,570/- in favour of respondent Matadeen, which is taken on record.

Notice of motion for 06.04.2016.

In the meantime, operation of impugned judgments and decrees is stayed.”

A reading of the order proves that this Court in order to test the bona fide intention of the appellant, directed the appellant to bring the amount by way of bank draft, however, this Court cannot be said to have finally adjudicated upon the case. Any interim order passed by this Court ex parte without hearing the other side cannot affect the result of the case at the final stage. No doubt, the appellant has shown her bona fides but here is a case where two Courts have exercised their discretion in favour of the plaintiff. Both the Courts have already examined this issue in detail and have returned a finding that the discretionary relief has to be in favour of the plaintiff.

This Court does not find that the discretion exercised by the Courts below is required to be interfered particularly when the discretion is based upon reasonably sound judicial principles. This is the requirement of

Section 20 of the Specific Relief Act, 1963.

In view thereof, there is no scope for interference in the judgments passed by the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

Counsel for the appellant would be entitled to receive back the demand draft deposited in this Court.

14.03.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No