

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

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**RSA-3883-2016 (O&M)
Date of Decision : 24.7.2018**

Smt. Bimla Devi

....Appellant

vs.

Parvesh Kumar

....Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. C.B.Goel, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below decreeing a suit for specific performance filed by the respondent.

The case of the respondent was that the appellant had made agreement to sell shop measuring 22.5 Square Yards situated at Railway road, within the municipal limits of Ganaur for a sum of Rs.2,50,000/- as per agreement to sell dated 16.7.2003. The appellant had received Rs.1,00,000/- by way of earnest money. Originally the date was fixed 15.1.2004 but on that date both the parties agreed to extend the date up to 16.7.2005 by way of writing executed on 15.1.2004. 16.7.2005 and 17.7.2005 being holidays on account of Saturday and Sunday, the respondent appeared before the Sub-Registrar on 18.7.2005. Since the appellant did not appear the respondent issued notice, and not having received any reply from the appellant, filed the instant suit.

The case of the appellant on the other hand was of total denial. It was her case that actually the appellant was interested in mortgaging the shop/house situated on the rear portion of the shop to the respondent and in fact had executed mortgage deed on 17.7.2003 and at that time the respondent had got her signatures on some typed papers and she being an illiterate lady could not read the contents. Respondent examined scribe and the witness also. Both the Courts below having decreed the suit the appellant is before this Court.

The first and foremost argument raised is that there was no occasion for the appellant to have executed agreement to sell the shop as on the very next day she mortgaged the house which is part of the same building and situated right behind the shop in dispute. Beyond that learned counsel has accepted that there is no evidence which was led by the appellant to prove her case. In my opinion though it may be strange for a person to execute mortgage deed of one part of the property on one date and agreement to sell another part on the next day but it cannot be said to be impossible. The issue is whether that strangeness is adequately explained or over ridden by the evidence. In the present, case both the Courts below have noticed that witnesses and the scribe have appeared and have testified that both the parties executed the agreement to sell after knowing and understanding the contents. In my considered opinion, whatever strangeness was there in this behavior has been over-ridden by the positive evidence of the respondent.

The last argument raised by the learned counsel is that respondent filed the suit in 2005. I however find that the suit was filed

within a few days of the appointed date i.e. 16.7.2005.

In the circumstances, no fault can be found with the judgments of the Courts below.

The appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

24.7.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No