

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

**R.S.A No.1004 of 2017(O&M)
Date of decision :12.09.2018**

Savitri Devi

..... Appellant

Versus

Bhagwati

..... Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Rakesh Dhiman, Advocate
for the appellant.

LISA GILL,J

Appellant-plaintiff is aggrieved of judgement and decree dated 25.07.2014, passed by learned Civil Judge (Jr. Division), Gurgaon, as well as judgement and decree dated 13.09.2016, passed by the learned District Judge, Gurgaon. Suit filed by the appellant-plaintiff was dismissed.

Brief facts necessary for the adjudication of the case are that suit for possession by way of specific performance of agreement dated 30.04.2010 was filed by the plaintiff. It was pleaded that defendant-Bhagwati along with one Babu Lal son of Bansi Ram agreed to sell a plot as detailed in the plaint vide agreement dated 30.04.2010 at the rate of ₹12,000/- per sq. yards. ₹50,000/- was handed over as earnest money. Balance amount, it was decided would be paid on or before 14.06.2010. The sale deed was to be executed on 13.06.2010, but the said date being a holiday, 14.06.2010 was determined as the last date for the registration of

the sale deed. The payment for execution of the sale deed was extended up to 24.06.2010 on 14.06.2010 due to unavoidable circumstances. In compliance thereof, Babu Lal executed a registered sale deed in favour of the plaintiff to the extent of his half share, but the defendant-Bhagwati, did not turn up. Legal notice dated 12.07.2010 was served for execution and registration of the sale deed on 25.07.2010 on payment of the balance amount. The same was duly replied to on 19.07.2010, though the plaintiff had already issued a reminder prior thereto. It is further pleaded that the defendant-respondent had no intention of honouring the agreement in question and sought to alienate the property in question to someone else. Therefore, the suit was filed.

Suit was resisted by the defendant-respondent. Various preliminary objections were taken in the written statement. Averments on merits were controverted. It was denied that any agreement to sell was ever entered into by defendant-respondent with the plaintiff neither was any earnest money received by her. Agreement in question, it is stated was prepared in a fraudulent manner in collusion with ulterior motive and *mala fide* intention to grab the land of the poor defendant, who is an illiterate lady. She is the owner of only 21 sq. yards of land which she inherited after the death of her husband-Laxmi Chand, who was the owner of the said land. It is specifically pleaded that brother of respondent-Bhagwati's deceased husband namely Asha Ram @ Hans Raj, Babu Lal and Hoshiyar Singh came to her house. They asked the respondent to append her signatures on the pretext of certain legal requirements after her husband's death. Trusting the said persons, she

thumb marked on blank papers. The said papers were misused. Legal notice dated 18.08.2010 in this respect was served. She also reported the matter to the police authorities at Police Station Palam Vihar, Gurgaon, but no action was taken. It was denied that respondent-defendant ever appended her thumb impressions upon any agreement to sell, voluntarily, knowingly or out of her own free will. Dismissal of the suit was prayed for.

From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the defendant had entered into an agreement dated 30.04.2010 to sell the suit land with the plaintiff @ 12,000/- per sq. yards and paid a sum of Rs.50,000/- as earnest money?OPP
2. Whether plaintiff has been, and is still ready and willing to perform his part performance of agreement dated 30.04.2010?OPP
3. If issues No. 1 and 2 are proved, whether plaintiff is entitled for decree of specific performance as prayed for?OPP
4. Whether suit of the plaintiff is not maintainable?OPD
5. Whether plaintiff has no locus standi to file the present suit?OPD
6. Whether suit is barred by limitation?OPD
7. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court concluded that the plaintiff-appellant had failed to discharge the burden of proof upon her. The suit was accordingly dismissed by the learned trial Court.

Appeal preferred by the appellant-plaintiff was also dismissed by the learned District Judge, Gurgaon, vide impugned judgement and decree dated 13.09.2016.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned Courts below have grossly erred in dismissing the suit filed by the appellant-plaintiff. Clear and cogent evidence on record has been ignored and perverse findings have been recorded by both the learned Courts below. It is argued that respondent-defendant has taken vacillating stands and has been unable to prove the stand taken by her. It is thus prayed that the impugned judgements and decrees be set aside and the suit filed by the appellant-plaintiff be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

It is relevant to note at this juncture that Babu Lal son of Bansi Ram is the brother-in-law (brother of the husband of the respondent-defendant). Appellant-plaintiff in order to prove agreement to sell dated 30.04.2010 (Ex.P-1) appeared as PW-1. Attesting witnesses of agreement Ex.P-1 namely Surinder (PW-2) and Hoshiyar Singh (PW-3) were examined. The appellant had pleaded that the respondent-defendant and her brother-in-law Babu Lal agreed to sell two plots measuring 21 sq. yards each for valuable consideration of ₹5,40,000/- and the date of execution was fixed as 13.06.2010. As 13.06.2010 was holiday, the date of execution of the sale deed was extended to 24.06.2010 on 14.06.2010 and endorsement was made on the agreement to sell. However, this endorsement is not signed by the defendant-respondent, but only by the other vendor-Babu Lal. PW-2-Surinder, deposed that ₹50,000/- was given by the purchaser to the seller at the time of agreement Ex.P-1 i.e.

30.04.2010. PW-3-Hoshiyar Singh in his cross-examination stated that payment of ₹50,000/- was made on 07.05.2010. The said amount was received by Babu Lal on 07.05.2010. It is apparent that no consideration ever passed to the defendant-respondent on 30.04.2010. Learned trial Court has rightly concluded that the earnest money received by Babu Lal and that too on 07.05.2010 i.e. after the date of the agreement and without notice to the respondent-defendant as well as extension of the date regarding execution of the sale deed being endorsed by Babu Lal alone, clearly establishes that the defendant-respondent signed/thumb marked agreement Ex.P-1 without even knowing the contents of the same and as a witness. The said agreement to sell is rightly held to be a sham transaction in so far as respondent-defendant is concerned.

Argument raised by learned counsel for the appellant that vacillating stands have been taken by the appellant in as much as three different stands were taken by the respondent regarding thumb impressions/signatures on Ex.P-1 is devoid of any merit. The said contention has been discussed by the learned District Judge, Gurgaon and rightly negated. It is proved on record that respondent-defendant is an illiterate lady. She did not even know how to append her signatures. She used to affix her thumb impressions. The plaintiff-appellant clearly failed to prove on record that agreement to sell was duly thumb marked by the respondent-defendant knowing fully well the contents thereof or that any consideration/earnest money had ever passed to her. Stand of the defendant-respondent to the effect that her signatures were fraudulently obtained by the co-vendor-Babu Lal, who was her brother-in-law is duly

substantiated on record. Furthermore, it is rightly observed by the learned District Judge, Gurgaon that since execution of the agreement to sell qua the respondent-defendant is not proved, question of readiness and willingness to act upon agreement Ex.P-1 does not arise. Concurrent findings of fact have been rendered by both the learned Courts below on proper appreciation and consideration of the evidence on record. Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 25.07.2014 and 13.09.2016 passed by the learned Civil Judge (Jr. Division) Gurgaon and learned District Judge, Gurgaon, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

12.09.2018

s.khan

(LISA GILL)
JUDGE

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