

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

**RSA No.1821 of 2017 (O&M)
Date of decision: 17.01.2018**

Moti Devi and another

.....Appellants

Versus

Pritam Singh and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Puran Singh Rana, Advocate,
for the appellants.

Ritu Bahri, J.

CM Nos. 4421-4422C of 2017

For the reasons mentioned in the applications, same are allowed and delay in filing re-filing of the appeal is condoned.

RSA No.1821 of 2017

This appeal has been filed against the judgment dated 26.07.2016 passed by the Additional District Judge, Karnal, dismissing an appeal filed by defendants-appellants against the judgment and decree dated 20.09.2011 passed by the Civil Judge (Senior Division), Karnal, whereby suit filed by plaintiff-respondent No.1 for specific performance of agreement to sell with consequential relief of permanent injunction, has been decreed.

Pritam Singh son of Bhola Ram-plaintiff (respondent No.1 herein) filed the aforesaid suit alleging therein that defendant No.1-Moti Devi, who was recorded as owner of land measuring 29 Kanals 12 Marlas (detailed in para Nos.1 (a) and (b) of plaint), entered into an agreement to sell the said

per acre and received a sum of Rs.5,00,000/- as earnest money in the presence of witnesses. Defendant No.1 had put her thumb impression on the agreement to sell, whereas plaintiff and the witnesses put their signatures thereon. The stipulated date for execution and registration of the sale deed was fixed as 27.04.2004. As per plaintiff, on the targeted date, he had requested defendant No.1 to get the sale deed execution, but she postponed the matter on one pretext or the other. The plaintiff had apprehensions that defendant No.1 would alienate the suit land in favour of some other person, therefore, he filed a suit for permanent injunction. In that suit, defendant No.1 appeared and agreed that she would not alienate the suit land in favour of any other person, except the plaintiff. In view of the said statement, the suit for permanent injunction was disposed of. However, later on, defendant No.1 transferred the suit land in favour of defendant Nos.2 and 3 by dint of registered relinquishment deed dated 10.06.2003. Mutation was also sanctioned in their favour. Thereafter, plaintiff again filed a suit for permanent injunction, wherein defendant Nos. 2 and 3 appeared and filed their written statement stating that he should have filed a suit for specific performance after expiry of the targeted date. On 27.04.2007, plaintiff visited the office of Sub Registrar, Nissing along with balance sale consideration and other charges, but defendant No.1 did not turn up. He also got his presence marked by moving an application before the Sub Registrar. As per plaintiff, defendants were threatening to dispossess the plaintiff from the suit land and to alienate the same to some other person. Hence, the suit.

Upon notice, defendants filed written statement taking preliminary objections with regard to maintainability of suit, suit being time

barred, concealment of true and material facts from the court, locus standi and the suit has not been properly valued for the purpose of court fee and jurisdiction. On merits, it was alleged that defendant No.1 never entered into an agreement to sell the suit land. Defendant No.1, who was an illiterate lady, was having visiting terms with the plaintiff, who got her thumb impression on some blank papers by taking advantage of her illiteracy and committed fraud upon her. It was further stated that the alleged agreement was not drafted by any regular deed writer. It was denied that defendant No.1 ever executed any agreement to sell or received any earnest money as alleged. It was further stated that in order to confirm the alleged agreement to sell, the plaintiff had filed a suit for permanent injunction and got the statement of defendant No.1 by producing some other lady before the Court in place of defendant No.1. Defendant No.1 never engaged any counsel nor made any statement before the Court. Defendant No.1 being absolute owner of the suit land, executed a relinquishment deed in favour of defendant Nos.2 and 3. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

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

1. Whether the plaintiff is entitled to ad-interim injunction restraining the defendants from alienating the suit land by way of sale/mortgage/charge/gift in favour of any other person except the plaintiff and from interfering in peaceful possession of the plaintiff over the suit land? OPP
2. Whether the present suit is not maintainable in the present form? OPD
3. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
4. Whether the plaintiff has concealed true and material facts from

the Court? OPD

5. Relief.

Thereafter, vide order dated 15.09.2011, following additional issues were framed by the trial Court:-

1a) Whether the defendant has entered into agreement to sell dated 30.04.2003 with the plaintiff and received Rs.5.00 lacs earnest money from the plaintiff. If so, to what effect? OPP

1b) Whether the plaintiff is/was ready and willing to perform his part of contract? OPP

1(c) If issue Nos.1, 1 (a) and 1 (b) are proved in affirmative, whether the plaintiff is entitled to get the sale deed executed and confirmation of possession by way of specific performance, as prayed for? OPP

1(d) If issues Nos.1, 1(a), 1 (b) and 1 (c) are proved, whether the relinquishment deed No.328/1 dated 10.06.2003 executed by defedant No.1 in favour of defendants No.2 and 3 is illegal, null and void and liable to be set aside? OPP

Trial Court, after going through the evidence led by the parties, held that agreement to sell dated 30.04.2003 Ex.P1 bears the signatures and thumb impressions of the parties. This document had been signed by witnesses namely Parmod Kumar (PW-2) and R.K. Dhankar, Advocate (PW-3) and one Sanjiv Kumar. Further, the plaintiff had examined Jai Parkash Sharma, Advocate/Notary Public as PW-4 and proved the agreement to sell Ex.P1. The agreement to sell was also bearing the receipt, which showed that earnest money of Rs.5.00 lacs had been received by defendant No.1. This document (Ex.P1) also bears the thumb impression of

Om Pal, husband of defendant No.1, who had admitted this fact during

cross-examination. Hence, keeping in view the deposition of Parmod Kumar (PW-2) and R.K. Dhankar, Advocate (PW-3), execution of agreement to sell Ex.P1 stood proved. While examining the case set up by the defendants (appellants herein), trial Court has held that there was no material to show that defendant No.1 had executed a relinquishment deed in favour of defendant Nos. 2 and 3. They (defendant Nos. 2 and 3) did not lead any evidence to show that they were *bonafide* purchasers without notice for valuable consideration and the payment was made in good faith. As per Section 19-B of Specific Relief Act, defendants cannot take a plea that plaintiffs cannot seek the relief of specific performance.

With regard to readiness and willingness, it has been held that application Ex.P2 and affidavit Ex.P3 were executed by the plaintiff in the office of Sub Registrar on the date fixed for execution and registration of the sale deed. But, defendant No.1 did not appear for execution of the sale deed. Rather, it was established that release deed Ex.D1 was executed by defendant No.1 in favour of defendant Nos.2 and 3 on 10.06.2003. This was done to escape from the liability on her part in respect of agreement to sell Ex.P1. With these observations, trial Court decreed the suit of plaintiff-respondent No.1 by holding that the release deed Ex.D1 was mere a paper transaction and was illegal, null and void.

On appeal, the lower appellate Court affirmed the findings returned by the trial Court and further observed that during cross-examination, defendant No.1 had admitted certain facts that agreement to sell Ex.P1 bears her photograph. She admitted the thumb impression of her husband on the said document. Even the receipt also bears the thumb impression of her husband Om Pal. Before the date of execution and

registration of the sale deed, plaintiff had filed a suit for permanent injunction against the defendants. In that suit, defendant No.1 appeared and suffered a statement Ex.PW4/A to the effect that she had executed the agreement to sell on 30.04.2003 after receiving the earnest money and she was ready to execute sale deed in favour of the plaintiff after receiving balance sale consideration. After recording the said statement, order dated 13.09.2003 Ex.PW4/B was passed by the Court, whereby the said suit was dismissed as withdrawn. Both the documents Ex.PW4/A and Ex.PW4/B were proved by Anju Bala, DRK, while producing the summoned file of civil suit No.168 of 2003, titled as 'Pritam Singh vs. Moti.'. Since, presumption of truth has to be attached to the statements recorded before the Court, the plea taken by the defendants that the agreement to sell Ex.P1 had been got executed by plaintiff by playing fraud, was rejected. Apart from the statements made in the above said suit, Sh. R.K. Dhankar, Advocate (PW-3) appeared and deposed that agreement Ex.P1 had been got drafted by him on 30.04.2003 at the instance of both the parties. Jai Pal Sharma (PW-4) produced the record pertaining to his Notary register, who had attested the agreement to sell Ex.P1 and registered the same in his register at Sr. No.630 dated 02.05.2003. He had proved the receipt Ex.P2 by stating that the earnest money of Rs.5,00,000/- had been paid in his presence. This witness was cross-examined at length, but nothing material contradictions could be extracted by the defendants. With these observations, appeal filed by defendants-appellants was dismissed by the lower appellate Court.

After going through the impugned judgments and documents

Ex.P1 to Ex.P4, Ex.P4/A, Ex.P4/B, Mark-A, Ex.D1 and Ex.D2, this Court is

of the view that lower appellate Court has rightly affirmed the judgment passed by the trial Court and decreed the suit of the plaintiff, as the agreement to sell Ex.P1 had been duly proved on record by the plaintiff by examining R.D. Dhankar (PW-3), Jai Parkash Sharma (PW-4). He has also proved his readiness and willingness to get the sale deed executed. On the other hand, defendants-appellants had merely denied the agreement to sell being forged and fabricated. They have failed to lead any cogent and convincing evidence to prove that any fraud, as alleged, has been played upon them. In these circumstances, no illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

17.01.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No