

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

RSA No.2307 of 2017

Rekha Sharma

....Appellant

Versus

Santosh & Ors.

....Respondents

Date of Order: 07.3.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Akshay Sandhir, Advocate for the appellant.

AMIT RAWAL, J (ORAL)

Appellant-plaintiff is in second appeal against the concurrent judgments and decrees of both the courts below whereby her suit for possession by way of specific performance of agreement to sell have been dismissed vide judgment and decree dated 1.3.2014 passed by the learned Civil Judge (Jr. Division), Amritsar and the findings affirmed in appeal vide judgment and decree dated 29.11.2016 passed by lower Appellate Court.

Plaintiff-appellant instituted a suit for possession by way of specific performance of agreement to sell dated 13.9.2010 allegedly executed by the defendants in favour of plaintiff in respect of one house bearing khana shumari no.2231/9-13 New and 1398/9 old measuring 100 sq yards, situated at Amritsar Urban Inside Gate Hakima Wala, Gali Hatam Tai, Amritsar; with alternative relief of recovery of Rs.6,25,400/- of earnest money i.e Rs.2 lac received on 13.9.2010 and Rs.1,12,700/- received on

17.1.2011 by defendant No.4, totalling Rs.3,12,700/- along with interest @ 18%, on the premise that the defendant had sought extension for execution of registration of sale deed from 13.1.2011 to 17.1.2011. Said suit was filed on 3.4.2012.

Defendant Nos.1 & 4 have although admitted to sign the agreement to sell but stated that they never refused to perform their part of contract and it was the plaintiff, who failed to perform her part of contract but despite numerous opportunities having been afforded, the plaintiff did not lead any evidence.

The trial Court on the basis of facts that the plaintiff failed to lead evidence and the issues are not proved on the file by way of oral as well as documentary evidence, although returned the findings on all the issues in favour of the plaintiff but dismissed the suit for want of evidence.

Learned counsel for the appellant submitted that once the trial Court has rendered findings on all the issues, there was no occasion for the trial Court to dismiss the suit. It is submitted that the counsel did not inform about the tendering of evidence and in that background, appellant-plaintiff had been deprived of proving her case.

After hearing learned counsel for the appellant and appraising the paper book, I am of the view that no plausible explanation has come forth of not leading evidence in a suit preferred in the year 2012, resulting into order of dismissal in terms of Order 17 Rule 3 CPC on 1.3.2014. The defendant did not lead any evidence knowing well that the plaintiff was to stand on her own legs. It is in this background of the matter that the trial Court while dismissing the suit has observed that the issues are returned in favour of the plaintiff though they have not been proved and will not be

having any impact on the case of the appellant-plaintiff. No ground for interference much less any substantial question of law arises for adjudication.

Dismissed.

March 07, 2018
manoj

^(AMIT RAWAL)
JUDGE

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