

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3617 of 2017 (O&M)
Date of Order:02.04.2018

Smt. Kamla alias Kamli

..Appellant

Versus

Krishan

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Nidhi Garg, Advocate,
for the appellant.

Mr. Atul Gaur, Advocate,
for Mr. Sumeet Goel, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

C.M.No.9978-C-2017 &
C.M.No.16277-C-2017

Allowed as prayed for.

Annexures A-1 and A-2 are taken on record.

C.M.No.8736-C-2017

Prayer in this application is for condonation of delay of 23 days
in filing the appeal.

For the reasons mentioned in the application, which is
supported by an affidavit, the delay of 23 days in filing the appeal is
condoned.

Application is allowed.

MAIN

Defendant-appellant is in the regular second appeal against the
concurrent findings of fact arrived at by the courts.

Plaintiff filed a suit on 11.01.2010 for possession by way of specific performance of the agreement to sell dated 07.02.2006. It was pleaded case of the plaintiff that the defendant-appellant had executed a pronote and receipt for a loan of Rs.2,20,000/- and it was agreed that if the defendant fails to pay the amount within 3 years, the land measuring 16 kanals would be sold in favour of the plaintiff on the agreed terms.

In the written statement, the husband of the defendant-appellant had taken a loan of Rs.20,000/- and not of Rs.2,20,000/-.

Both the court on appreciation of evidence available on the file have recorded a finding of fact that the agreement to sell is proved, however, taking into consideration that the agreement to sell was executed to secure the recovery of loan, admitted between the parties, therefore the court ordered refund of the earnest money of Rs.3,78,400 along with future interest @ 6% per annum.

First appeal preferred by the defendant was also dismissed.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below.

Learned counsel for the appellant has vehemently argued that in fact the thumb impression as well as signatures on the pronote and receipt and agreement to sell were result of fraud. She has submitted that she is a “Parda Nashin lady” and therefore, her thumb impressions and signatures were obtained on the blank papers.

Learned counsel for the respondent has submitted that both the courts have examined the plea as submitted by the defendant-appellant and have found no truth in the same.

This court has considered the submissions, however, do not find any substance in the argument of learned counsel for the appellant.

It is well established that fraud is required to be pleaded in accordance with Order 6 Rule 4 of the Code of Civil Procedure. Fraud is also required to be proved beyond any reasonable doubt. In the present case, defendant-appellant has failed to establish her plea of fraud. The particulars of the fraud as required to be pleaded have not been pleaded. Only defendant-appellant has stepped into the witness box to prove her plea of fraud. Both the courts on appreciation of evidence, have found that the plea of fraud is not proved. Learned trial court has noticed that although she has deposed that she never went to the Tehsil complex and the documents in questions were got signed at her residence, however she could not specifically deny her signatures in the register of the notary public. The court has further found that in cross-examination, she has almost denied every question put to her for want of knowledge.

The findings of the Courts, which is not shown to be the result of misreading of evidence or non consideration of material evidence, this court does not find any good ground to interfere.

The regular second appeal is dismissed.

April, 02, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No