

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

RSA No.3655 of 2018 (O&M)

Date of decision : 02.07.2018

Anita Rani

...Appellant

Versus

Harminder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunil Toni, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit for possession by way of specific performance of the agreement to sell with respect to house comprised in 4 marlas of land situated in Village Manakpur, Tehsil Rajpura, District Patiala.

The defendants contested the suit and pleaded that there was neither any agreement to sell nor Kharaiti Lal, their predecessor was competent to get the house transferred.

Both the Courts below on appreciation of the evidence have recorded the concurrent findings of fact that the agreement to sell dated 18.04.2008 is proved on file in accordance with law and the payment under the agreement to sell has also been proved. Still further, the Courts have noticed that the defendants served a notice on the plaintiff in April, 2008

wherein only the payment was disputed and the execution of the agreement to sell was not disputed. The plaintiff replied thereto and pleaded that he was ready and willing to perform his part of the contract.

This Court has heard the learned counsel for the appellant at length.

Learned counsel for the appellant has submitted that on the day, Kharaiti Lal entered into the agreement to sell, the house in question was not transferred in his favour and, therefore, he was not competent to enter into the agreement to sell.

This Court has considered the submission, however, finds no substance because a person who was having no title or imperfect title can enter into the agreement to sell and the purchaser can get the aforesaid agreement to sell specifically enforced in view of Section 13 of the Specific Relief Act, 1963, if the Vendor subsequently acquires title. Still further, in the present case, the question of title is not to be decided in a suit for specific performance of the agreement to sell. The Court is only required to specifically enforce the contract.

Still further, learned counsel for the appellant has produced before this Court a photocopy of the agreement to sell dated 18.04.2008. It is Kharaiti Lal, predecessor of the appellant who had purchased the stamp paper for the execution of the agreement to sell. Kharaiti Lal has signed all the three pages on which the agreement to sell has been written. Still further on the back of page 1, there is a separate receipt typed which has also been signed by Kharaiti Lal. The agreement to sell is scribed on non-judicial stamp paper of ₹300/-. Kharaiti Lal has also signed the endorsement of

having received the further payment.

In view thereof, there is no scope for interference.

Regular Second Appeal is dismissed.

02.07.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No