

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

RSA No.4688 of 2017(O&M)

Date of Decision:-18.01.2018

Om Parkash.

.....Appellant.

Versus

Smt. Shanti Devi.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Jayoti Parshad Sharma, Advocate for
Appellant(defendant).

JASWANT SINGH, J.

Defendant/appellant is in second appeal, aggrieved against the judgment and decree dated 10.07.2017 passed by Additional District Judge, Karnal, whereby the appeal filed by the respondent/plaintiff, against the alternative relief granted by the Civil Judge (Jr. Divn.), Karnal vide judgment and decree dated 18.09.2015 in a suit for specific performance was reversed and consequently, the respondent/plaintiff's suit for specific performance was decreed in *toto*.

Learned Counsel for the appellant has argued that both the Courts below have erred in law by holding that the impugned agreement to sell dated 20.07.2010 Ex.P-1 has been legally proved on

record, by ignoring the fact that neither the stamp vendor has been examined to prove the purchase of the stamp papers nor the due execution of the agreement to sell is proved by the alleged attesting witnesses of the impugned agreement to sell. In any case it is argued that the courts below have failed to analyze the fact that the plaintiff/respondent has also not been able to prove his readiness and willingness to perform his part of the contract.

Lastly, it has been argued that a plea of fraud was taken by the appellant and in view of the fact that there was a fiduciary relationship amongst them, onus was completely upon the plaintiff/respondent to dispel the said allegation of fraud/misrepresentation. In support his contention he has relied upon **Subash Chander & Ors. Vs. M/s Active Promoters Pvt. Ltd. 2015 (1) RCR (Civil) 62.**

After hearing learned Counsel for the appellant and perusing the paper book this Court is of the considered view that the present appeal is devoid of any merit and same deserves to be dismissed.

It is evident from the record that respondent/plaintiff, has filed present suit for specific performance on the basis of impugned agreement to sell dated 20.07.2010 and as per the allegations, the earnest money of Rs.50,000/- was paid and the total sale consideration was Rs.2 lacs. Further, it is evident that the defendant/appellant had denied the agreement to sell itself and it was stated that he had taken a

loan from the plaintiff/respondent. However, the learned trial Court had come to a conclusion that the agreement to sell in question was indeed executed amongst parties and thus, alternative relief of recovery was granted. Against the said judgment and decree, only one appeal was filed i.e. by the plaintiff/respondent. Meaning thereby, the appellant-defendant had accepted the judgment and decree passed by the trial Court, whereby it was held that the agreement to sell was indeed executed between the parties. The Appellate Court reversed the said findings qua non grant of relief of specific performance by discussing the conduct of appellant/defendant-Om Parkash, whereby he had admitted that he had received the amount from plaintiff/respondent-Shanti Devi. He had contradicted himself as to what was stated in the written statement and what he had stated in his deposition. After discussing the said conduct, the Appellate Court had come to the conclusion that the stand of the defendant is incorrect and consequently, relief of specific performance was granted.

It is settled position of law that once the defendant had denied the basic execution of the agreement to sell itself, which is found to be incorrect at a subsequent stage, he cannot raise the plea that plaintiff was not ready and willing because denial of the execution of the agreement to sell itself means that the defendant-vendor was himself not ready and willing. In such a situation, a mere statement made by the plaintiff in his examination in Chief that he was ready and willing is sufficient to hold that the plaintiff has been and throughout

ready and willing to perform his part of the contract.

Since the appellant had not challenged the findings returned by the trial Court qua the execution of the agreement to sell, the said finding has become final and appellant cannot be permitted to challenge it in Regular Second Appeal, as the same is barred by law. Consequently, the Judgment relied upon by Ld. Counsel for the appellant is also not applicable to the facts of the present case.

In view of the above, finding no question of law much less substantial question of law arising for determination in the present second appeal, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

January 18th, 2018
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>