

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

120

Date of Decision : 29.08.2018

1. RSA No.5124 of 2017 (O&M)

Parveen Rani

..... Appellant

Versus

Gulshan Kumar

..... Respondent

2. RSA No.5139 of 2017 (O&M)

Parveen Rani

..... Appellant

Versus

Gulshan Kumar

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Abhinav Gupta, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

This order shall dispose of above mentioned two appeals.

These two appeals have been filed against the judgment of the lower appellate Court whereby he allowed an appeal filed by the respondent and dismissed one filed by the appellant.

The respondent was a tenant in one shop owned by the appellant. He filed a suit for specific performance claiming that the appellant had agreed to sell the shop under his tenancy to him vide agreement to sell dated 21.10.2011 for a total consideration of Rs.9,70,000/- and had obtained a sum of Rs.1,70,000/- as earnest money. The target date was fixed as 30.10.2012. As per the respondent on the target date he appeared before the Sub Registrar, Dhuri with the remaining consideration but the appellant did not turn up. Immediately, he contacted his advocate and got drafted notice dated 30.10.2012, informing the appellant that she had not appeared and giving her one more opportunity to appear that notice was dispatched the very next day i.e. 31.10.2012. In reply the stand of the appellant was that on 21.10.2011 she had borrowed a sum of Rs.1,70,000/- from the respondent and he had got the agreement to sell signed as a security and subsequently she returned the money but the respondent did not cancel/return the original agreement to sell and filed this false suit. The appellant examined one of the attesting witnesses of the agreement to sell. It is noteworthy to mention that in paragraph 4 of the written statement the appellant did not deny that the respondent was present in the office of the Sub Registrar, Dhuri on the target date. Even in paragraph 5 of the written statement the appellant did not deny the issuance of the notice. The trial Court held that the agreement was duly proved but did not grant the relief of specific performance directing the appellant to return double the amount of consideration money.

Both the parties filed appeal and, as mentioned above the appeal of the respondent was allowed while that of the appellant was

rejected. The appellate Court noticed that there was no special circumstance

which would justify the non-grant of the relief for specific performance and decreed the suit in entirety and hence the present two appeals have been filed.

Learned counsel has argued that it was the stand of the appellant that the shop in dispute was part of a one integral building in which there were three shops on the ground floor and the residence of the appellant on the first floor. Both the other shops on the ground floor were also in the possession of the appellant and in case one shop was owned by the respondent it would prevent the appellant from using her remaining property.

I am of the opinion there is no warrant for this argument. It is admitted that even prior to the agreement to sell the respondent was in exclusive use and possession of the shop in dispute. The appellant was very well living on the first floor without any problem and merely because the title would change would not justify non-grant of specific performance.

Learned counsel has argued that in the plaint the respondent had averred that it was the appellant who had got the agreement to sell scribed but when he appeared in his testimony he fumbled and stated that he did not know who had got the agreement scribed.

In my opinion, this argument would be of no avail. Once the appellant had herself admitted the execution of the agreement (although she had stated that it was a loan transaction) it was hardly germane if the respondent fumbled about who had scribed the same.

Both the appeals stand dismissed.

Since the main cases have been decided, the pending civil miscellaneous applications, if any, also stand disposed of.

29.08.2018
Pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No