

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

RSA No.5582 of 2017(O&M)

Date of Decision:-17.01.2018

Smt. Rakesh Devi.

.....Appellant.

Versus

Shish Ram & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Ajay Jain, Advocate for Appellant.

JASWANT SINGH, J.

Smt. Rakesh Devi-plaintiff/respondent to the counter claim raised by the respondent no 1/defendant no. 1, is in appeal aggrieved against the concurrent findings returned by the Courts below, whereby counter claim filed on behalf of Shish Ram-defendant no.1/respondent no-1 claiming specific performance of the agreement to sell dated 27.1.2007, has been decreed by the learned Civil Judge(Sr. Divn.), Rewari vide judgment and decree dated 30.04.2014 and the findings thereof have been affirmed by the learned Additional District Judge, Rewari vide judgment and decree dated 19.05.2017.

Learned Counsel for the appellant has raised following arguments:-

1. *That payment of Rs.4,85,000/- on 15.02.2007 has been erroneously held to be proved merely on the oral testimonies of the witnesses Anant Pal, Dev Parkash along with evidence of Shish Ram-counter claimant. It*

is urged that no prudent man would offer such a heavy amount without even a receipt of such payment or any acknowledgment of such payment on agreement to sell.

- 2 *That in the reply to the counter claim, the appellants have taken a specific plea that the disputed house is the only residential house of the entire family, therefore, the decree for specific performance in toto is not liable to be passed.*
3. *It is argued that Shish Ram had pleaded that the agreement to sell dated 27.01.2007 was scribed in the Tehsil by typist Satpal and in his cross examination has stated that Satpal and Shish Pal had read over the contents of agreement to Rakesh Devi, said Satpal, however, has not been produced as a witness to substantiate the plea.*
4. *That no stamp vendor was produced to substantiate the plea that Rakesh Devi had purchased the stamp papers upon which the agreement to sell dated 27.01.2007 was scribed.*

In support of his contentions he has relied upon **Nanjappan Vs. Ramasamy & Anr. 2015(2) RCR (Civil) 224, Veluyudhan Sathyadas Vs. Govindan Dakshyani 2003(1) RCR (Civil) 28, Kanta Vs. Gajanand Decided by this Court on 21.03.2016, Richhpal Singh Vs. Sandhura Singh 2014(9) RCR (Civil) 70 & Sardar & Anr. Vs. Ram Khilauna & Ors. 1997 AIR (Allahabad) 268.**

I have heard learned Counsel for the appellant and perused the paper book with his able assistance. However, this Court is of the considered view that the present appeal is devoid of any merit and deserves to be dismissed.

Admittedly, plaintiff had originally filed a suit for permanent

injunction, which was withdrawn by her and a counter claim raised by the

defendant/respondent no.1 had survived for consideration before the Courts below. The case set out by the appellant in the reply to the counter claim is that the agreement to sell in question is based upon fraud and misrepresentation and is a forged document executed without consideration. It has been further stated that the counter claimant/respondent no.1 came to their house and asked them to sign on papers for the purpose of executing a mortgage, by stating that he is advancing a loan of Rs.2 lacs at 18% interest per annum for six months. Thus, the case is of clear denial by the appellant of the agreement to sell in question.

In order to prove the execution of the agreement to sell, the defendant has examined himself as DW-13 and Ramesh Chand as DW-9, who is the attesting witnesses to the agreement to sell. Apart from that, DW-11 Anand Pal and DW-12 Dev Parkash have also supported the oral testimony of Shish Ram-defendant no.1/respondent no.1 qua the payment of earnest money of Rs.4.85 lacs. It was under these circumstances that the Courts below held that the impugned agreement to sell to be valid and further that passing of the earnest money stands proved.

As far as the first argument of the learned Counsel for the appellant is concerned, as noted earlier, the case set out by the plaintiff/appellant is of complete denial of the agreement to sell. The deposition of the witnesses examined by the defendant/respondent have clearly proved the passing of the earnest money and it has come on record that both the parties had cordial relationship amongst themselves. In our present Indian society, it is not uncommon to have faith upon known persons and advance the amount without execution of written acknowledgment or receipt. The present case also seems to fall within to

that category. In Civil matters the Courts are required to adjudicate the dispute on the basis of preponderance of evidence and are not required to determine on the basis of concrete proof, as is required in criminal cases. After perusing the paper book, it comes out that both the Courts had correctly appreciated the oral evidence led on record by the defendant/respondent no.1 to come to a conclusion that the agreement to sell was indeed executed amongst the parties and passing of earnest money had also taken place. There is no counter to the said oral evidence led on record by the plaintiff/appellant, which could demolish the case of the respondent no.1/defendant no.1. Accordingly, the first argument raised on behalf of the appellant is hereby rejected.

As far as the second argument raised by learned Counsel for the appellant is concerned, the same is also without any merit. The appellant had entered into agreement so as to sell the suit property, which happens to be a house. Subsequently, she cannot be permitted to take a plea of the house being only residential accommodation for the entire family. In fact, the complete denial of the agreement to sell by the appellant shows a malafide intention on her part to fleece money from respondent no.1/defendant no.1 and thereafter, take frivolous pleas like the present one. Hence I have no hesitation in rejecting this argument as well.

As far as the third argument is concerned, the same is also without any merit. Mere non examination of Satpal-Deed Writer does not demolish the case of respondent no.1/defendant no.1 at all. It is not the requirement of law that an agreement to sell has to be proved by examining deed writer. By examining the attesting witness of the agreement to sell, namely DW-9 Ramesh Chand, respondent no.1/defendant no.1 has

discharged the onus put upon him. It is not the quantity of evidence which is required to be evaluated but the quality. Thus, mere non examination of Satpal-Deed Writer, does not, in any manner demolishes the case of the respondent no.1/defendant no.1.

Last argument raised by the learned Counsel for the appellant is also without any force because producing the stamp vendor will not prove anything new and would only lead to multiplicity of evidence lead to prove his case. Thus, non examination of stamp vendor will not cause any kind of doubt regarding the due and valid execution of the agreement to sell.

Now coming to the judgments that have been relied upon by the learned Counsel for the appellant. By now it is well settled law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first, before applying any codified or judge made law thereto. Each case is to be decided as per its own peculiar facts and situation. Sometimes, difference of even one additional fact or circumstances can make the word of difference as held by Hon'ble Supreme Court in **Padmausundra Rao & Anr. Vs. State of Tamil Nadu and Ors., 2002(3) SCC 533.**

In view the foregoing discussion, 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 17, 2018

Vinay

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