

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

**RSA No.5608 of 2017 (O&M)
Date of decision: 15.02.2018**

Y.P. Singh

.....Appellant

Versus

Mrs. Rajni Airi

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Suman Jain, Advocate,
for the appellant.

Ritu Bahri, J.

This appeal has been directed against the judgment of reversal dated 18.09.2017 passed by the Additional District Judge, Gurugram, whereby appeal filed by plaintiff (respondent herein) against the judgment & decree dated 18.03.2011 passed by the Additional Civil Judge (Senior Division), Gurgaon, has been accepted and suit filed by the plaintiff (respondent herein) for specific performance and permanent injunction, has been decreed.

Plaintiff-respondent filed the aforesaid suit to the effect that on 05.05.1995, defendant-appellant entered into an agreement to sell flat No.1414 A, First Floor, situated at Maruti Vihar (Saraswati Vihar), Gurgaon with plaintiff for a total sale consideration of Rs.2,50,000/-. Rs.50,000/- were paid by the plaintiff in cash and the remaining amount was paid through different demand drafts. Possession of the suit property was delivered to the plaintiff on the date of agreement. Defendant had also

executed General Power of Attorney in respect of the said house in favour of the plaintiff's nominee i.e. Sh. Ashutosh Airi (husband of plaintiff). As per plaintiff, she had already performed her part of the contract, but defendant was not ready to perform his part, therefore, she served a legal notice dated 22.07.2007 upon the defendant calling upon him to do the needful, but he failed to do so. Hence, the suit.

Upon notice, defendant filed written statement, wherein it was stated that only a rent agreement in respect of the suit property was executed by him in favour of the plaintiff, which was duly attested by Notary on 05.05.1995. Plaintiff had paid a sum of Rs.2,50,000/- to the defendant, out of which, Rs.50,000/- were given in cash and the remaining amount of Rs.2,00,000/- was given through demand drafts. The rent period was for 20 years, which had started from April, 1995. It was further submitted that plaintiff had obtained signatures of the defendant on some blank papers and taking advantage of the same, she had forged the agreement in question and the General Power of Attorney, Special Power of Attorney etc. All other allegations levelled by the plaintiffs in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the defendants entered into agreement dated 05.05.1995 as alleged? OPP
2. Whether the plaintiff has been ready and willing to perform her part of contract? OPP
3. If issues no.1 and 2 are proved, whether the plaintiff is entitled to specific performance of contract and permanent injunction as prayed for? OPP
4. Whether the suit of the plaintiff is not maintainable in the

present form? OPD

5. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
6. Whether the plaintiff has not come to the Court with clean hands? OPD
7. Whether the plaintiff is estopped from filing the present suit by her own act, conduct? OPD
8. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit on the ground that plaintiff had admitted her signatures on the rent agreement Ex.RW1/A and she had failed to prove that any agreement to sell was executed with respect to the property in question. Feeling aggrieved, plaintiff filed an appeal, which was dismissed by the Additional District Judge, Gurgaon vide judgment and decree dated 15.03.2013. Thereafter, plaintiff filed RSA No.2885 of 2013 along with application under Order 241 rule 27 CPC before this Court, which was decided vide order dated 28.03.2014 by observing as under:-

“The matter is remanded back to the appellate court to decide the appeal afresh, after allowing the parties to lead evidence in respect of documents which have been brought on record by way of additional evidence. The appellate court shall try to conclude the evidence and decide the appeal within a period of six months from the date of appearance of the parties.”

On remand of the case, the lower appellate Court held that the stamp papers were purchased on 05.05.1995 as was clear from the stamp of the stamp vendor, but agreement to sell Ex.PW8/A was executed in the month of April, 1995. But, this appears to be only a typographical mistake as it was typed and attested on 05.05.1995, which was clear from the conclusion of the writing. Only month of April has been typed in place of May. Even in the rent note, the date of execution is noted as 05.05.1995,

whereas in the first line of the same, it was also showing that it was executed in the month of April, 1995. The other documents i.e. Power of Attorney Ex.P1, Special Power of Attorney Ex.P2, Will Ex.P3, receipt Ex.P4, affidavit by respondent Ex.P6, another affidavit by respondent Ex.P7 and indemnity bonds by the respondent Ex.P8 also showed that those documents were executed on the same time on 05.05.1995 when the agreement to sell in question was executed.

Hence, it was concluded by the lower appellate Court that it was unbelievable that the suit property could be rented out for a period of 20 years and there was no explanation, why blank papers were signed by the defendants on the same day. There was no need to execute power of attorney and the Will in favour of the plaintiff. The Will was executed as entire sale consideration had been paid and possession was handed over to the plaintiff. Further, the General Power of Attorney and the Will were executed, so that in case later on, the seller failed to get the sale deed executed, the purchaser might execute the same without the presence of seller. The sale could not be executed as a condition was imposed by the allotment authority. The plaintiff had served a legal notice upon the defendant calling upon him to execute the sale deed, but he failed to do so. Since all the documents, stated above, were executed on one and the same day i.e. 05.05.1995, the suit of the plaintiff has been rightly decreed by the lower appellate Court and defendant-appellant has been directed to execute the sale deed in favour of plaintiff within a period of forty five days.

After going through the impugned judgments, this Court is of the view that the lower appellate Court has rightly accepted the appeal and decreed the suit filed by the plaintiff. No illegality, much less perversity, has

been found in the findings given by the lower appellate Court, which may warrant interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Resultantly, finding no merits, the present appeal is dismissed.

15.02.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No