

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

RSA No.1902 of 2019 (O&M)

Date of Decision: 19.08.2019

Manisha Begum @ Anisha Begum

.....Appellant

Vs.

Khushinder Pal Mohindra

.....Respondent

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.Naveen Upadhyay, Advocate, for the appellant.

Mr.Liaqat Ali, Advocate, for the respondent.

DR. RAVI RANJAN, J. (Oral Judgment)

This appeal is directed against the judgment and decree dated 18.12.2018 passed by Additional District Judge, Ludhiana, in Civil Appeal No.455 of 2017 by which he has dismissed the appeal of the defendant/appellant and affirmed the judgment and decree passed by the Civil Judge (Jr.Divn.), Ludhiana in Civil Suit No.69 of 2015 by virtue of which the trial Court has decreed the suit in favour of the plaintiff holding that he is entitled for possession of the land by way of specific performance of agreement to sell dated 15.02.2013 read with endorsements/acknowledgements dated 15.08.2013 and 07.02.2014 made by the defendant in favour of the plaintiff with respect to the suit property. The defendant was directed to execute and get registered the sale deed in favour of the plaintiff upon receipt of balance sale consideration of Rs.50,000/- and to deliver the actual and physical possession of the suit property. That apart, plaintiff has also been found entitled for a decree of permanent injunction restraining the defendant herself, attorneys, agents, representatives etc. from

or transfer deed through any vehicle of transfer or otherwise creating any third party interest or encumbering the property.

The plaintiff filed a suit for specific performance of agreement to sell dated 15.02.2013 read with endorsements/acknowledgements dated 15.08.2013 and 07.12.2014 executed by the defendant in favour of the plaintiff with respect to the suit property which is a double storeyed house standing over 47-1/2 sq. yards consisting of two rooms, kitchen, latrine/bathroom having electricity and water connection as detailed in plaint. Plaintiff also sought a decree for permanent injunction restraining the defendant or her attorneys or agents and representatives etc. from transferring or alienating or incumbering the suit property.

According to the plaintiff, the defendant, claiming herself to be owner in possession of the property, approached him in the month of February, 2013 for its sale. Defendant/appellant claimed that she had acquired the property by virtue of a registered sale deed dated 24.09.1999 and the property stands mutated in her name in the revenue record of rights. The plaintiff entered into an agreement for sale dated 15.02.2013 whereby the defendant agreed to transfer the suit property in favour of the plaintiff for a total sale consideration of Rs.7,00,000/-. The defendant, at the time of execution, received Rs.1,75,000/- in cash as earnest money. The plaintiff, further agreed to pay another sum of Rs.1,00,000/- out of the remaining sale consideration on 15.08.2013 and the date of performance originally was fixed on 15.07.2014. The agreement was executed in the presence of the parties and the attesting witnesses. The plaintiff again paid a sum of Rs.3,25,000/-, in place of Rs.1,00,000/- out of the balance sale consideration on 15.08.2013 in the presence of marginal witness, v.i.z. Mohd. Aslam

Hussain and, with the mutual consent of the parties, the date of performance of the agreement was extended from 15.07.2014 to 09.12.2014. The defendant confirmed that she had received a total sum of Rs.5,00,000/- out of the total sale consideration till 15.08.2013. An endorsement to this effect was made on the backside of the first page of the original agreement of sale which was attested by the witness. In the first week December, 2014, the defendant again demanded a sum of Rs.1,50,000/- from plaintiff towards part payment of the balance sale consideration which was again paid on 07.12.2014. Till the said date, the defendant received a total sum of Rs.6,50,000/- out of Rs.7,00,000/-, i.e., the total sale consideration. At the time of last payment, the defendant handed over the original sale deed dated 24.02.1999 by which she had purchased the suit property and also undertook to hand over the latest *jamabandi*. Thus, it was averred on behalf of the plaintiff that the major part of the sale consideration of Rs.6,50,000/- out of the total of Rs.7,00,000/- was already paid to the defendant and only a sum of Rs.50,000/- remained to be paid. On the date fixed, i.e., 09.12.2014, the plaintiff remained present before the Office of the concerned Sub Registrar, Ludhiana with the balance sale consideration and sufficient funds to meet the expenditure to be incurred towards the stamp duty, execution and registration charges to perform his part of the obligation. However, the defendant failed to come. The plaintiff waited throughout the working hours and, in token of his presence, sworn an affidavit on the same day, but the defendant dishonestly abstained from performing her part of the obligation under the agreement to sell and did not execute the sale deed. Hence, the civil suit was filed.

The defendant appeared in response to the notice and filed her

written statement raising, apart from technical, objections on merits that the plaintiff is doing banking work as he used to manage loan to the people from banks. Her husband was known to the plaintiff and since her husband was in dire need of money, he approached the plaintiff for loan of Rs.2,00,000/-. The plaintiff told her husband that he is having good links in State Bank of India and would arrange a loan of Rs.2,00,000/-. Under the garb of getting the loan disbursed in favour of the husband of the defendant, the plaintiff took the original sale deed of the suit property and several signatures and thumb impressions of the defendant on blank papers including blank stamp papers as well as some blank cheques. However, the plaintiff failed to get the loan sanctioned and despite approaching several times, did not return the original sale deed and other signed papers. The plaintiff told the husband of the defendant that the blank stamp papers, blank papers, blank cheques signed by the defendant and the original sale deed were lost somewhere and got registered the DDR No.683722 dated 17.11.2014 in the Police Station Jamalpur, Ludhiana. However, the defendant was stunned to know that the plaintiff had filed a false suit against her on the basis of forged agreement to sell dated 15.02.2013 for the sale of suit property. She denied taking any amount from the plaintiff as earnest money and her approaching the plaintiff for sale of the suit property.

Upon consideration of rival pleadings, the trial Court framed the following issues:

1. Whether the defendant entered into agreement to sell dated 15.02.2013 in favour of plaintiff after receiving the Rs.1,75,000/- as earnest money?OPP.
2. Whether the plaintiff is ready and willing to perform his part of contract?OPP.
3. If issue No.1 and 2 are proved, whether plaintiff is entitled to relief of possession by way of specific performance of agreement to sell as prayed for?OPP.

4. Whether the plaintiff is entitled to get the relief of permanent injunction as prayed for?OPP.
5. Whether suit of the plaintiff is not maintainable in the present form?OPD.
6. Whether the plaintiff has concealed materials facts from the Court? OPD.
7. Whether the plaintiff has no cause of action to file the present suit? OPD.
8. Whether plaintiff has not paid proper ad-valorem court fees? OPD.
9. Relief.

The trial Court, while dealing with the issue No.1, has held that the plaintiff has duly proved on record the execution of the agreement to sell and once the agreement is proved, equity demands its enforcement rather than to grant alternative relief of refund of earnest amount and payment of damages specially when almost entire sale consideration was except Rs.50,000/- was already paid. The issue No.2 was also decided in favour of plaintiff holding that he has already proved his readiness and willingness from the time of execution of agreement to sell till date. Accordingly, both the issues as well as issue Nos.3 and 4 were decided in favour of the plaintiff. So far issues No.5 to 8 are concerned, it has been noted by the trial Court in its judgment that during argument, learned counsel for the defendant did not press these issues.

As a sequel to the aforesaid findings, the suit was decreed directing the defendant to execute the sale deed after receiving Rs.50,000/- of balance sale consideration and also restraining her from alienating or encumbering the property.

The defendant preferred appeal before the first Appellate Court but the same was also dismissed vide the impugned judgment and decree dated 18.12.2018 upholding the views and findings of the trial Court.

In the aforesaid background the matter, I have heard learned

counsel for the appellant and the respondent. Learned counsel for the appellant has assailed the judgments of the courts below on diverse grounds. It is contended that the defendant never approached for sale of the suit property whereas her husband approached for loan and under that garb, the original sale deed was taken by the plaintiff. It is stated that plaintiff used to provide loan to the people as he had connection with State Bank of India. It is further contended that marginal witnesses was contract person and therefore, he has adduced false evidence and has helped in creating the forged document. It is further contended that the defendant/appellant has stated that she was not present at the time of execution of agreement to sell and marginal witness has admitted this fact in his cross-examination. It has further been urged that plaintiff has nowhere disclosed that how he knows the defendant. Lastly, it is urged that the defendant/appellant is a *pardanashin* illiterate lady and she has been made victim of forgery.

However, both the courts below have held that the plaintiff has duly proved on record the execution of agreement to sell and the plea that he was engaged in business of arranging loans to the peoples and also to the husband of the defendant/appellant could not be proved at all. It has been noted by the trial Court that, at the time of cross-examination, no suggestion was put to the plaintiff that the concerned agreement was not agreement to sell but was part of the loan transaction. It is well established principle that fraud is to be specifically pleaded and then has to be proved by leading cogent evidence. However, nothing of that sort could be done by the defendant/appellant. The plaintiff has placed on record the site plan Ex.P1, original agreement to sell Ex.P2, his affidavit at the time when he was present before the Sub-Registrar as Ex.P7, endorsement/acknowledgement on

the backside of the first page of the agreement to sell as Ex.P3 etc. The evidence of plaintiff has remained un-rebutted and unchallenged. On the other hand, the defendant has not examined any witness to establish that the agreement to sell is a forged and fabricated document. She could not deny her signature and not examined any handwriting expert etc. Even if, the marginal witness has stated in his cross-examination that she was not present at the time of execution that sole variation in the stand of the marginal witness would not be enough to dislodge the plaintiff as the defendant has not only signed the agreement to sell but has signed the endorsement for two subsequent payments also. In fact, the major part of the sale consideration, i.e.,Rs.6,50,000/- out of the total of Rs.7,00,000/-has already been paid and merely Rs.50,000/- was required to be paid as balance consideration.

Having regards to the aforesaid facts and circumstances of the case, in my view, no good ground could be set forth by the learned counsel for the appellant warranting interference in the judgments and the decrees of the Courts below. The matter stands concluded by concurrent findings recorded by both the courts below.

In the result, this appeal is dismissed.

Before parting with the matter, I must indicate that no other ground was raised by parties at the time of hearing save and except those which have already been considered as above.

(DR. RAVI RANJAN)
JUDGE

19.08.2019

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No