

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

RSA No. 3014 of 2019(O&M)

Date of decision: 2.9.2019

Satwinder Kaur

.....Appellant

VERSUS

Jasbir Singh (deceased) through LRs

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. B.P.S. Virk, Advocate for the appellant.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for possession by way of specific performance of agreement to sell dated 23.05.2006 has been partly allowed and the respondent/plaintiff has been granted alternative relief of recovery of Rs.2 lakhs with pendente lite interest at the rate of 9% per annum and future interest at the rate of 6% per annum by the trial Court vide judgment and decree dated 07.09.2015 that came to be affirmed in appeal by the Additional District Judge, Tarn Taran vide judgment and decree dated 05.02.2019.

Perusal of the impugned judgments would reveal that there is no dispute between the parties that agreement to sell in respect of plot No.100 measuring 450 square yards situated in Focal Point, Tarn Taran on the basis of lease deed/writing No.766 dated 31.05.1996 was entered into between the parties for sale consideration of Rs.13,30,000/-. Out of the

aforesaid amount, a sum of Rs.2 lakhs was paid towards earnest money and the sale deed was agreed to be executed on 30.07.2007 on payment of balance sale consideration but the respondent/appellant was obligated to complete certain formalities as the suit property was leased out by PSIEC.

Counsel for the appellant has assailed the impugned judgments by raising two-fold submissions. It is argued that the respondent/plaintiff is guilty of tampering with the agreement of sale by converting the date for execution of sale deed to 30.07.2007 in place of 30.01.2007. Two lines at the bottom of body writing of the agreement has been added later in order to nullify the effect of tampering as in those two lines there is reference to date 30.07.2007 both in figure and words. It is argued that since the respondent/plaintiff is guilty of tampering with the agreement, he is not entitle to any relief whatever.

The second submission made by counsel is that the respondent/plaintiff has failed to prove that he always remained ready and willing to perform his part of the agreement. To bring home his contention, it is argued that the respondent/plaintiff, in his cross examination, had admitted that as per the agreement, he was obligated to complete certain formalities namely furnishing indemnity bond, duly attested affidavit from Executive Magistrate Ist Class to PSIEC but he had not completed those formalities. He has further admitted that as per the agreement, he was obligated to pay balance sale consideration of Rs.11,30,000/- prior to execution of sale deed but he has not paid the money to the appellant/defendant. In addition, it is argued that even the affidavit purported to be got attested by the respondent in respect of his

presence in the office of Sub Registrar on 30.07.2007 does not make reference that he had balance sale consideration and miscellaneous expenses for meeting expenses of registration etc.

I have heard counsel for the appellant, perused the paper-book and copies of documents supplied during the course of hearing.

Before adverting to submissions made by counsel for the appellant, it is pertinent to note that consistent findings of fact recorded by the Courts do not warrant intervention in the second appeal unless they suffer from perversity or is the result of failure to take into consideration material which has strong bearing on merits of the case.

The plea of the appellant with regard to changing the target date or adding last two lines in the agreement has been negated by the Courts. Counsel for the appellant has failed to point out any such facts elicited in cross examination of the plaintiff or the witnesses examined to prove the agreement of sale that any change was made in the agreement subsequent to its execution on 23.05.2006. The appellant has sought to rely upon testimony of so-called expert witness examined for the purpose. There is no such opinion given by the expert that age of the ink used for writing the original agreement and the alleged addition of two lines is different or there is difference of ink of those two lines vis-à-vis the remaining part of the agreement. The opinion of expert ordinarily is of fragile nature as the private expert toe line of the party who has engaged him. In absence of the appellant having successfully assailed credibility and veracity of direct evidence adduced by the respondent to prove agreement of sale, the Courts have rightly refused to rely upon testimony

of the expert witness particularly in the circumstances that even in photocopy of agreement which was got produced by the appellant in suit for mandatory injunction filed by her, the body writing of the agreement tallies with the original agreement produced in the Court except that in the photocopy, dated 23.05.2006 was not mentioned and attestation by one of the witnesses was not there. In this view of the matter, contention raised by counsel for the appellant in respect of tampering with the agreement is not meritorious and accordingly rejected.

No doubt, the respondent/plaintiff in his cross examination had stated with regard to his liability to furnish the indemnity bond, attested affidavit and payment of sale consideration prior to date of execution of sale deed. However, perusal of the agreement would reveal that no such obligation was created to be discharged by the proposed vendee before execution of the sale deed in question. In this view of the matter, the appellant cannot derive any advantage to her contention from statement of the respondent or to contend that since the respondent had failed to discharge his obligation under the agreement in respect of indemnity bond, affidavit or payment of balance sale consideration before the date fixed for execution of sale deed, findings of the Courts with regard to readiness and willingness of the respondent to perform his part of the agreement are faulty.

Perusal of affidavit got attested by the respondent in respect of his appearance in the office of Sub Registrar on 30.07.2007 does not make reference that he had brought the balance sale consideration and money for incurring expenses on registration etc. There is no obligation in law even

to get any affidavit attested with regard to presence in the office of Sub Registrar on the stipulated date. A litigant prepares such an affidavit to be used as evidence before a Court of law in case of litigation. Counsel for the appellant has reproduced entire cross examination of the respondent in the grounds of appeal but he has failed to point out any such fact elicited in his cross examination that he did not have the resources to pay balance sale consideration on 30.07.2007. Counsel for the appellant before the trial Court, for the reasons best known, did not put even a single question with regard to capability of the respondent to meet his obligation qua payment of balance sale consideration of Rs.11,30,000/- and miscellaneous expenses. He has denied the suggestion that he has not mentioned the factum of bringing the balance sale consideration and miscellaneous expenses in Ex.P2 because he had not brought the same. As per the settled position in law, the proposed vendee is not required to tender the balance sale consideration before the Registering Authority. In absence of any materials brought forth in cross examination of respondent that he was not possessed of means to satisfy his monetary obligation under the agreement, the appellant cannot derive any advantage to her contention from the factum of non-mentioning of the said fact in affidavit Ex.P2.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

SEPTEMBER 2, 2019

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no