

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

RSA-958-2009(O&M)

Date of decision:-2.4.2019

Rakesh Kumar

...Appellant

Versus

Smt.Krishna and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

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

Mr.Vineet Chaudhary, Advocate
for the respondent No.1.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff –
Smt.Krishna had filed a suit for possession against defendants
Rakesh Kumar and Naresh Kumar, both sons of Sh.Shugan Chand,
residents of Ambala Cantt on the averments that defendants are
owners of the suit property in the form of shop No.5529 having

property No.5529-30/1, Pansari Bazar, Ambala Cantt. and defendant No.1 agreed to sell the said property with the plaintiff for a total sale consideration of Rs.4 lacs vide agreement to sell dated 26.6.1997 receiving a sum of Rs.3 lacs as earnest money; that the remaining sale consideration amount of Rs.1 lac was agreed to be paid at the time of the execution of sale deed; that the defendant No.1 Rakesh Kumar had undertaken to make available his brother Naresh Kumar in the office of Sub-Registrar, Ambala Cantt. for the purpose of execution of sale deed, in the alternative he had undertaken that he would obtain general power of attorney from his said brother and executed the sale deed; that defendant No.1 had mentioned in the agreement that he was duly authorized to enter into the agreement and to execute the sale deed on his behalf and that of his brother Naresh Kumar; the last date for execution of sale deed was fixed as 25.3.1999; that it was specifically agreed between the plaintiff and defendant No.1 that in case defendants failed to get the sale deed executed on or before the stipulated date, then the plaintiff would be at liberty to get the agreement enforced by filing a suit for specific performance and in that event the defendants would be liable to pay costs of the proceedings; furthermore, the defendant No.1 had agreed to obtain "No Objection Certificate" from the Municipal Council, Ambala Sadar, Ambala Cantt. for the sale of the suit property to the plaintiff on or before 25.3.1999; that it was further agreed between

the parties that in event of plaintiff failing to get the sale deed executed within the stipulated period on payment of balance sale consideration, then the earnest money paid by plaintiff to defendant No.1 would be forfeited and if the legal proceedings were initiated on account of failure of defendants to execute the sale deed, then all the costs and expenses would be borne by the defendants; it was further agreed between the parties that if there was any lien or encumbrance found on the shop in question or defendant No.1 failed to get the sale deed executed and registered from his brother – Naresh Kumar, then he would be liable for criminal prosecution also; that an agreement dated 26.6.1997 was reduced into writing, signed by the parties and defendant No.1 acknowledged the receipt of Rs.3 lacs in the said agreement. According to the plaintiff, she has always been ready and willing to perform her part of agreement but defendants did not come forward to get the sale deed executed after accepting the balance sale consideration amount; that the plaintiff served a notice dated 14.2.1999 upon the defendants sent through registered AD post asking the defendants to execute the sale deed on 24.3.1999 and to obtain “No Objection Certificate” from the Municipal Council informing that plaintiff would remain present in the office of Sub Registrar with balance sale consideration and registration charges on that date, failing which, civil/criminal proceedings would be initiated against the defendants; that the notice was received and replied to by

defendant No.1 on 9.3.1999 in a vague manner and he denied the execution of agreement and receipt of Rs.3 lacs; that the defendant No.1 alleged that he used to take short term loan from husband of the plaintiff and in lieu thereof, the husband of the plaintiff had obtained signatures on 3-4 blank stamp papers, on which the agreement in question had been forged. According to the plaintiff to show her bonafide, the plaintiff remained present before Sub Registrar, Ambala Cantt. on 24.3.1999 with balance sale consideration of Rs.1,00,000/- and a sum of Rs.70,000/- for purchase of stamp papers and registration charges etc.; that the plaintiff was still ready and willing to get the sale deed executed on payment of balance sale consideration; that she had got the pay order of Rs.1,00,000/- prepared on 23.3.1999 from State Bank of Bikaner and Jaipur; that when the defendants did not turn up, then plaintiff got an affidavit attested from Sub Registrar, Ambala to show her bonafides. Feeling aggrieved by such conduct of the defendants, the plaintiff filed the suit in question.

On notice, the defendants had appeared and filed a joint written statement contesting the suit raising legal objections with regard to maintainability of the suit; that suit being bad for non-joinder of parties; that the plaintiff had not approached the Court with clean hands etc. On merits, the defendants denied material assertions in the plaint coming with a version that Smt.Chatro Devi

was the owner of the property No.5529, Pansari Bazar, Ambala Cantt. but she had not been impleaded as one of the defendants and no agreement to sell has been pleaded to have been executed by her in faovur of the plaintiff, therefore suit was liable to be dismissed. According to the defendants, they never agreed to sell the property in question with the plaintiff on 26.6.1997 for sale consideration of Rs.4 lacs. According to them, the value of the shop in question was more than Rs.8 lacs and defendants had no occasion to sell the said property for a meagre sum of Rs.4 lacs; that as a matter of fact Sh.Yogesh Kumar Garg, who is husband of the plaintiff was a tenant on the first floor of property in question at monthly rent of Rs.1,200/- under Smt.Chatro Devi etc. and an ejectment petition filed by Smt.Chatro Devi was pending before the Rent Controller, Ambala Cantt; that the suit had been filed as a counter-blast to the ejectment petition with a malafide intention; that the defendants denied having received Rs.3 lacs from the plaintiff as earnest money; it was further denied that Rakesh Kumar defendant No.1 had undertaken to produce his brother defendant No.2 in the office of Sub Registrar, Ambala for the purpose of execution of the sale deed or had given an assurance to procure power of attorney from him. The material assertions in the plaint were denied. According to the defendants, the defendant No.1 had neither agreed nor was competent to enter into agreement; that defendant No.1 used to obtain short term loans from

husband of the plaintiff and in lieu thereof, he had obtained signatures of defendant No.1 on 3-4 blank stamp papers and it appeared that he had forged agreement to sell on such papers. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the agreement dated 26.6.1997 is valid and legal?
OPP.
2. Whether the plaintiff is ready and willing to perform her part of the agreement? OPP.
3. Whether the defendants are trying to alienate the suit property to some third person? OPP.
4. Whether the suit is bad for non-joinder of necessary parties?
OPD.
5. Relief.

In order to prove her case, the plaintiff Smt.Krishna had got recorded her statement as PW1 and she further examined Sh.Vinod Kumar as PW2, Sh.Inderjit as PW3, Sh.Yashpal as PW4 and Sh.Santosh Kumar as PW5 besides tendering certain documents.

On the other hand, defendant No.1 Rakesh Kumar had appeared himself as DW1 and the defendants further examined Sh.Adesh Goel as DW2.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiff, issue No.3 against the plaintiff, issue No.4 against the defendants. Resultantly, the trial Court vide judgment and decree dated 24.8.2007 decreed the suit partly to the extent of share of defendant No.1 only and such defendant No.1 was directed to get the sale deed executed qua his share in favour of the plaintiff within a period of one month and to return the excess sale consideration of Rs.1 lac received by him from the plaintiff. It was observed that if defendant No.1 will not execute the sale deed within stipulated period of one month, the plaintiff would be at liberty to get the sale deed executed through agency of the Court at the cost of defendant No.1.

Feeling aggrieved by the said judgment and decree, the defendant No.1 had filed an appeal before District Judge, Ambala, which was assigned to Additional District Judge, Ambala, who vide judgment and decree dated 3.12.2008 dismissed the appeal and upheld the impugned judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the defendant No.1 has filed the present regular second appeal before this Court, notice of which was issued

and the respondent No.1-plaintiff appeared through counsel.

I have heard learned counsel for the parties besides going through the records and I do not find any merit in the appeal.

Both the Courts below have returned findings that defendant No.1 had entered into an agreement to sell the suit property with the plaintiff for himself as well as for his brother but since he was not the attorney of his brother and was otherwise not proved to have been authorized to enter into an agreement to sell on his behalf. The defendant No.1 was liable to execute the sale deed in favour of plaintiff qua his share only on receipt of the consideration amount. Though defendant No.1 had set up a story that he had not entered into an agreement voluntarily and rather his signatures had been obtained by husband of plaintiff on 3-4 blank stamp papers and agreement was a result of forgery. However, the Courts below have rightly discarded such plea of defendant No.1 for the reason that defendant being an educated person would not have signed on the blank stamp papers in such a manner and plaintiff by leading enough cogent and convincing evidence had proved due execution of agreement to sell. As observed by the Courts below, the plaintiff has successfully established that she has been ready and willing to perform her part of contract throughout and that the transaction could not be completed on account of defendant No.1 not coming forward to execute the sale deed.

With regard to the authorities referred to by learned counsel for the appellant i.e. **Dheeraj Developers Private Limited Versus Dr.Om Parkash Gupta and others, 2016(2) RCR(Civil) 461, Bal Krishna & Anr. Versus Bhagwan Das (Dead) & Ors., 2008(2) RCR(Civil) 732, His Holiness Acharya Swami Ganesh Dassji Versus Sita Ram Thapar, 1996(2) Recent Revenue Reports 684, Ram Ditta Versus Financial Commissioner (Revenue) Punjab and another, 2014(4) RCR (Civil) 386, Kalawati (D) through LRs & Ors. Versus Rakesh Kumar and Ors.2018(2)RCR(Civil) 125** and **Jagjit Singh (D) thr. LRs Versus Amarjit Singh, 2018(4) RCR(Civil) 827**, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made especially when the plaintiff has successfully proved the due execution of agreement to sell for consideration with regard to share of defendant Rakesh Kumar and further that she has all along been ready and willing to perform her part of contract. The defendant Rakesh Kumar, who is appellant before this Court along with her brother Naresh Kumar is joint owner of the shop in question. The share of Rakesh Kumar defendant being to the extent of 1/2 share as such, the Courts below have rightly decreed the suit for specific performance qua 1/2 share of defendant Rakesh Kumar only in view of Section 12 of the Specific Relief Act.

The concurrent findings on the issues so recorded do not suffer from any irregularity or illegality. The findings are affirmed.

No fault is found with the judgments and decrees passed by the Courts below. Those are upheld.

No substantial question of law arises in this appeal.

It being so and in view of the concurrent findings returned by the Courts below with which I do not see any reason to disagree, I conclude that the appeal is without merit and is dismissed accordingly.

2.4.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No