

In the High Court of Punjab and Haryana at Chandigarh

RSA- 1419 of 2015 (O&M)
Date of Decision: 13.9.2019

Chanderwati

---Appellant

versus

Jagbir Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. R.S.Sihota, Senior Advocate with
Mr. B.R.Rana, Advocate
for the appellant**

**Mr. Sudhir Aggarwal, Advocate,
for the respondent**

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for specific performance of agreement of sale dated 16.6.2006 was decreed by the trial court vide judgment and decree dated 23.4.2012 that came to be affirmed in appeal by the Additional District Judge, Palwal.

The respondent-plaintiff filed suit for possession by way of specific performance of agreement dated 16.6.2006 in respect of land measuring 7 kanal 15 marlas i.e. 1/4th share in land measuring 30 kanal 18 marlas situated in revenue estate of village Gharrot, Tehsil Hathin, District Palwal, detailed in para 1 (unnumbered) of the judgment of the trial court. It is averred that the appellant-defendant entered into agreement to sell the suit property as per registered agreement bearing No. 1154 dated 16.6.2006

for an amount of Rs. 5,71,565/-. A sum of Rs. 2,15,000/- was paid before execution and registration of agreement of sale and balance sale consideration was to be paid at the time of execution and registration of sale deed on 16.12.2006. It is further averred that the respondent-plaintiff always remained ready and willing to perform his part of the agreement but the defendant threatened to alienate the suit property to some other person. On 15.12.2006, plaintiff was present in the office of Sub Registrar and got his presence marked by swearing an affidavit, as 16.12.2006 was a holiday.

The appellant-defendant filed the written statement raising preliminary objections qua non-maintainability; locus standi, cause of action and concealment of material facts etc. It was submitted that the defendant is an illiterate lady. The plaintiff took defendant to Tehsil compound on 16.6.2006 for preparation of loan documents. He took her thumb impressions on blank papers by playing fraud and prepared agreement to sell. She neither entered into any agreement to sell her property nor the plaintiff paid any amount towards earnest money. In fact, she asked the plaintiff to get passed a loan from the bank and accompanied him to Tehsil compound on 16.6.2006 for preparing loan documents.

The trial court framed issues, reproduced in para 4 of the judgment of said court.

To prove his case, the plaintiff examined Majlish Registry Clerk PW1, Mahesh PW2, Panna Lal Nambardar PW3, Ashok PW4, Bir Singh Tewatia, Advocate PW6 and himself appeared in the witness box. To rebut evidence of the plaintiff, the defendant-appellant examined himself and Badley DW2.

Having heard counsel for the parties in the light of materials on

record, the trial court answered issue No. 1 in favour of respondent-plaintiff and eventually suit of the respondent was decreed with costs to the effect that plaintiff is entitled to possession of suit property by way of specific performance of agreement of sale dated 16.6.2006 on payment of balance sale consideration i.e. Rs.3,56,565/-. If the defendant refused to accept the balance sale consideration, plaintiff can deposit the same in government treasury under orders of the court within two months. After depositing balance sale consideration, the appellant-defendant was directed to get the sale deed executed and registered in favour of the plaintiff. If she fails to do so, the plaintiff was left at liberty to take recourse to execution process.

As has been noticed hereinbefore, appeal filed by the respondent-defendant was dismissed by the Additional District Judge, Palwal and the court affirmed findings of the trial court without any variance.

Counsel for the appellant has assailed the impugned judgments primarily by raising three fold submissions. It is argued that during the course of evidence, it has been sought to be proved that oral agreement was entered into between the parties on 15.6.2006 but no such plea of oral agreement has been raised in the plaint. It is further argued that as per plea of the respondent, the stipulated date for execution of sale deed was 16.12.2006 but the respondent-plaintiff caused appearance in the office of Sub Registrar on 15.12.2006 without intimation to the appellant-defendant. It is argued with vehemence that alleged presence of respondent in the office of Sub Registrar on 15.12.2006 without intimation to the appellant is of no consequence to prove readiness and willingness to perform his part of the agreement. The last submission made by counsel is that the appellant is

a poor, illiterate lady who belongs to scheduled caste. Plea of the appellant with regard to obtaining her blank thumb impressions on the pretext of arranging loan gets duly corroborated from testimony of Badley DW2, therefore, in the given circumstances, the courts have seriously faulted by allowing discretionary relief of specific performance of agreement particularly when the case is examined in the light of Section 20 of the Specific Relief Act, 1963.

Counsel representing the respondent-plaintiff, on the contrary, has supported consistent findings recorded by the courts with the submission that no intervention in concurrent findings is warranted as the appellant has failed to make out a case that findings of the courts suffer from perversity or the present appeal raises a question of law that needs determination in second appeal. It is further argued that plea of the appellant that her blank thumb impressions were obtained on agreement gets falsified and belied from the fact that the agreement is a registered document and a presumption of correctness is attached to endorsement made by the registering authority in discharge of its official function. It is further argued that the appellant has not alleged any animosity against her by Panna Lal Nambardar and Mahesh, attesting witnesses of the agreement of sale. It is further argued that as the appellant wanted to alienate the suit property even before the stipulated date i.e. 16.12.2006, the respondent was constrained to file suit for permanent injunction in September 2006 restraining the appellant from alienating the suit property and the same very suit was later converted to suit for possession by way of specific performance of agreement by seeking amendment under Order 6 Rule 17 of the Code of Civil Procedure (in short “the Code”). It is further argued that

since the appellant has denied her having executed the agreement of sale, she possibly cannot raise the plea of respondent being not ready and willing to perform his part of the agreement and it only remains between the court and the plaintiff to determine the question of readiness and willingness. For this purpose, reference has been made to judgment of this court **Lal Chand vs. Tek Chand 2013 (5) RCR (Civil) 104.**

I have heard counsel for the parties, perused the paper book and records.

To prove execution of agreement, the respondent-plaintiff besides his own statement, examined both the attesting witnesses namely Mahesh son of Manphool Singh PW2 and Panna Lal Nambardar PW3. Counsel for the appellant has failed to point out any facts elicited in cross examination of attesting witnesses to create a slightest doubt in the case set up by the respondent-plaintiff that agreement of sale was executed and got registered by the appellant. The appellant has admitted that agreement of sale bears her thumb impressions though she has raised the plea that she was taken to Tehsil compound on 16.6.2006 on the pretext of preparing certain documents for arranging a loan in favour of the appellant. The story of blank thumb impressions set up by the appellant becomes highly doubtful in the given scenario that the agreement is a registered document and a presumption of correctness is attached to endorsement made by the registering authority. The appellant has not alleged any hostility against her by the attesting witnesses, officials of the registering authority or the then registering authority. Nothing has been pleaded by the appellant as to for what purpose, she wanted to take loan and why did she take the respondent in confidence for arranging loan or appended blank thumb impressions at

the behest of respondent. This apart, contention of the appellant gets falsified and belied in view of her cross examination as she even denied that she knew Jagbir son of Devi Ram, respondent-plaintiff in the present case. If the appellant did not know Jagbir plaintiff, where was the occasion for her to accompany Jagbir to tehsil office for the purpose of getting loan and appending thumb impressions on blank papers. This fact alone dismantles the entire case set up by the appellant in respect of her blank thumb impressions much less the agreement being the result of fraud, required to be proved akin to a criminal charge. In the given circumstances, the appellant cannot derive any advantage to her contention from testimony of Badley. Rather it shows that Badely DW2 is a procured witness and his testimony is bereft of truth. In view of the above, I do not find any reason to interfere in consistent findings recorded by the courts accepting claim of the respondent that agreement dated 16.6.2006 was executed by the appellant in favour of respondent-plaintiff. Once the respondent is successful in proving agreement Ex. P1 and plea of the appellant with regard to her blank thumb impressions is rejected, all the recitals in the agreement would become binding against the appellant including the fact that she had already received amount of Rs. 2,15,000/- towards earnest money before getting the agreement executed and registered. In this view of the matter, non-pleading the factum of oral agreement between the parties loses relevance and significance.

As per the agreement, the target date for execution of sale deed was 16.12.2006. Indisputably, prior thereto, on 13.9.2006 the respondent filed suit for permanent injunction restraining the appellant from alienating the suit property as she had entered into agreement of sale registered on

16.6.2006. The appellant caused appearance in the court prior to 16.12.2006 but did not file written statement or reply to application for grant of temporary injunction. There is nothing on record suggestive of the fact that she ever expressed her willingness to get the sale deed executed and registered in favour of the respondent, in terms of the agreement. In the written statement filed later in point of time, she had taken the plea of blank thumb impressions and non-execution of agreement of sale. In the given circumstances, appearance or non-appearance of the respondent in the office of Sub Registrar on the stipulated date or a day later was an empty formality, therefore, the appellant cannot derive any advantage to her contention from the factum of appearance of the respondent in the office of Sub Registrar on 15.12.2006 or his non-appearance in the said office on 17.12.2006, 16.12.2006 being a holiday. In this view of the matter, I find it difficult to accept contention of the appellant that since the respondent appeared in the office of Sub Registrar a day prior to the stipulated date or he did not appear in the office of Sub Registrar on 17.12.2006, the same would negate his plea of readiness and willingness to perform his part of the agreement. The very fact that the respondent filed a suit for permanent injunction basing his claim on agreement to sell dated 16.6.2006 even before the target date fixed for execution of the sale deed and later the suit for injunction was converted to that of specific performance proves intention of the respondent that he always remained ready and willing to perform his part of the agreement i.e. payment of balance sale consideration and incurring expenses for registration etc.

In view of discussion made hereinbefore, I find myself unable to be persuaded with the submissions made by counsel for the appellant that

the courts have wrongly exercised discretionary jurisdiction by allowing specific performance of the agreement.

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

(Rekha Mittal)
Judge

13.9.2019.

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No