

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

RSA No.2002 of 2015 (O&M)

Date of decision:10.01.2019

Prem Devi

... Appellant

Vs.

Rajinder Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ajay Jain, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings of fact and law, whereby, appellant-defendant had not been successful in defending the suit for specific performance of the agreement to sell dated 20.01.2006.

The plaintiffs claimed specific performance of the aforementioned agreement in respect of land measuring 8 kanals 8 marlas agreed to be sold at the rate of Rs.47,50,000/- per acre against the payment of Rs.10 lakhs as earnest money. The stipulated date for execution and registration of the sale deed was fixed as 28.02.2006. The suit aforementioned was filed on 20.03.2006.

The defendant opposed the suit and denied the execution of the agreement to sell and stated that in fact, rate agreed was Rs.1.00 crore as the plaintiff did not get the buyer nor received a sum of Rs.10.00 lakhs in cash.

It was un-partitioned land between co-sharers, therefore, could not have been sold. It was further explained that plaintiff and defendant agreed to execute the sale deed on 28.02.2006 and had appeared before the office of Naib Tehsildar/Executive Magistrate, Dharuhera from 9.00 a.m to 5.00 p.m but the plaintiffs did not turn up. In such circumstances, the plaintiffs have no right to execute the sale deed.

The plaintiffs in support of the aforementioned pleadings examined PW1, Pardeep Kumar Aggarwal, Deed Writer, PW2 Gopal Das Stamp Vendor, PW3 Surender, PW4 Vijay Rustogi Finger Print Expert and PW5 Rajender Singh and closed the evidence. On the other hand, defendant examined DW1-Dharambir, DW2-Hukam Singh and DW3-Prem Devi herself and closed the evidence.

Mr. Ajay Jain, learned counsel appearing on behalf of the appellant-defendant submitted that contents of the agreement to sell reveal that an agricultural land has been sold for residential purpose which was against the provisions of Section 23 of Contract Act. The agreement stood frustrated when the plaintiffs did not appear, though the defendant admitted to have remained present in the office of Naib Tehsildar. The first target date on 28.02.2006, 28 is written by hand, whereas, month and year have been typed. The lady had been duped as the plaintiffs misused the blank signed papers. The report of handwriting expert could not have been believed as it is tendency amongst such witnesses to depose in favour of their clients. Section 20(2)(b) of Specific Relief Act, 1963 (hereinafter referred to as “1963 Act”) should have been invoked by the Court below in

view of hardship suffered by the appellant as the agreement was 13 years old and his client is willing to compensate the respondent-plaintiffs in terms of money.

I have heard the learned counsel for the appellant-defendant and appraised the judgments and decrees of the Courts below.

While dealing the last argument as first, I am of the view that it is not sustainable in view of the Explanation II as the appellant-defendant has not been able to establish the hardship at the hands of the plaintiffs. Section 20(2)(b) of 1963 Act, in such circumstances cannot be read in isolation but in conjunction with Explanation II. For the sake of brevity, Section 20(2)(b) of 1963 Act and Explanation II read as under:-

“(20(2)(b) The following are cases in which the Court may properly exercise discretion not to decree specific performance- (b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff;

Explanation II.— The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.”

During the pendency of the trial, the appellant had given her specimen signatures which was examined by PW4, Finger Print Expert. She in evidence admitted her signatures but could not explain under as to how and under what circumstances, the blank signed papers were used, much less price of Rs.1.00 crore.

Section 23 of Contract Act would not be attracted as there is no bar for selling an agricultural land for residential purposes as local laws regulating the nature of the land, would be applicable. It is not decipherable whether an application for any change of land was ever submitted.

Be that as it may, once the defendant appeared before the office of Naib Tehsildar, there is admission of the agreement and had intention to sell the land but thereafter deviated owing to escalation in the price.

All these facts have been looked into by both the Courts below. The arguments of Mr. Jain, have not been able to cut ice to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by both the Courts below.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 10, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No