

In the High Court of Punjab and Haryana at Chandigarh

RSA- 5791 of 2015 (o&m)
Date of Decision:15.11.2019

Pushpa Budhwar

---Appellant

vs.

Satish Kumar

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. D.K.Tuteja, 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 contract for sale and direction to the respondent-defendant to get the already executed sale deed in question registered in favour of appellant-plaintiff, permanent injunction restraining the respondent-defendant from alienating the suit property and interfering in possession of the appellant-plaintiff over the suit property i.e. house measuring 200 square yards, detailed in para 2 of judgment of the trial court, was dismissed by the Civil Judge (Junior Division), Rohtak, vide judgment and decree dated 18.1.2014 that came to be affirmed in appeal preferred by unsuccessful plaintiff-appellant.

The case, in brief, is that respondent was owner in possession

of house measuring 200 square yards and agreed to sell the same for consideration of Rs. 4,05,000/- and entire sale consideration was paid at the house of respondent-defendant. After purchase of non-judicial stamp papers, sale deed was executed by the respondent on 9.3.2010. Physical possession of the property was also delivered to plaintiff-appellant by the defendant-respondent. On the same date, sale deed was presented for registration before Sub Registrar, Rohtak but the respondent-defendant all of a sudden slipped away. The appellant always remained ready and willing to perform her part of the contract. She served registered AD notice dated 7.9.2010 calling upon respondent to get the sale deed registered in favour of the appellant but to no result. Hence the suit.

The respondent-defendant did not contest the case and was proceeded against ex parte.

Counsel for the appellant would argue that incomplete sale deed has been proved, in accordance with law. It is further argued that Appellate Court dismissed the appeal by making certain observations including the one that the appellant-plaintiff has failed to prove that respondent-defendant was owner of the suit property and competent to alienate the same. It is argued that appellant has filed application (CM No. 11068-C of 2016) by invoking Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure (in short "the Code") seeking permission to produce certified copy of sale deed No. 8102/1 dated 25.10.2005. It is argued that certified copy of the sale deed sought to be produced by way of additional evidence proves ownership of respondent-defendant in respect of the suit property. It is vehemently argued that as the respondent-defendant

did not contest the suit, allegations raised in the plaint are deemed to be accepted as correct, therefore, there was no reason for the courts to dismiss the claim.

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

Perusal of averments in the plaint makes it evident that there is no reference to oral or written agreement for sale of suit property by the respondent in favour of the appellant. Plea of appellant is that entire sale consideration of Rs. 4,05,000/- was received by the respondent at his residence and incomplete sale deed dated 9.3.2010 (Ex. P1) was executed by him but when the same was presented for registration, the respondent left the office of registering authority. As has been pointed out by counsel, the Appellate Court has held that there is nothing on record that respondent was having title to the plot in question. The court has further held that if a doubt arises with regard to agreement of sale, the discretionary relief shall not be granted.

The appellant has filed application seeking permission to place on record copy of sale deed dated 25.10.2005 (Annexure A7). Perusal of the plaint makes it evident that suit property is a house measuring 200 square yards situated at village Sunaria Kalan, Tehsil and District Rohtak. The sale deed (Annexure A7) pertains to land measuring 3 kanal 9 marlas out of land measuring 5 kanal 3 marlas comprised in khewat No. 139 min, khatauni No. 172 min killa No. 76/18/1 situated in village Sunaria Kalan as per jamabandi for the year 2001-02 meaning thereby that the said sale deed pertains to agricultural land. Vide the aforesaid sale deed, the sellers

namely Haripal and Joginder sons of Sh. Lakhi had sold land measuring 3 kanal 9 marlas and all rights appurtenant thereto including irrigation, passage etc. Perusal of description of the suit property in para 1 of the plaint shows that the suit property is bounded by property of others in north and east, property of Baljit Singh in south and 15 feet wide gali on the west. In the given circumstances, it is difficult to connect sale deed (Annexure A7) with the suit property to establish that suit house was ownership of respondent-defendant and he was competent to alienate the same in favour of the plaintiff-appellant. In absence of clear evidence with regard to title of respondent qua the suit property, it is difficult to accept contention of the appellant that a direction needs to be issued to the respondent-defendant to register the sale deed executed in favour of the appellant-plaintiff.

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

(Rekha Mittal)
Judge

15.11.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No