

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

RSA No.6095 of 2015 (O&M)

Date of decision:20.3.2019

Satwant Kaur

... Appellant

Vs.

Jangir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vaibhav Sehgal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.15243-C of 2015

For the reasons stated in the application which is duly supported by an affidavit, delay of 265 days in re-filing the appeal is condoned.

C.M. stands allowed.

C.M.No.15244-C of 2015

For the reasons stated in the application which is duly supported by an affidavit, delay of 56 days in filing the appeal is condoned.

C.M. stands allowed.

RSA No.6095 of 2015 (O&M)

The present Regular Second Appeal is directed against the concurrent findings of fact and law whereby suit of the appellant-plaintiff seeking specific performance of the agreement to sell dated 02.02.2005 in

respect of suit land, has been dismissed.

The appellant-plaintiff sought the specific performance of the agreement to sell, *ibid* by filing a suit on 03.01.2006 *inter alia* on the ground that defendants had agreed to sell the land by receiving Rs.5.00 lakhs as earnest money and fixed the target date for execution and registration of the sale deed as 30.09.2005. On 15.06.2005, another sum of Rs.7.00 lakhs was paid which was received in the presence of the witnesses. Though the agreement to sell was signed on behalf of the plaintiff by Amarjit Singh but on the target date, he approached the defendants for demarcation of the land which was not acceded to resulting into sending of legal notice dated 05.12.2005 calling upon them to appear before the office of Sub Registrar on 12.12.2005.

The defendants opposed the suit and denied the agreement to sell and stated that plaintiff used the blank papers bearing thumb impressions as he had gone to the office of Sub Registrar for the purpose of execution of the Will and denied the receipt of Rs.5.00 lakhs as earnest money and another Rs.7.00 lakhs on 15.06.2005. There was no intention to sell the land.

The plaintiff in support of the aforementioned pleadings examined herself as PW1, B.S.Mangat as PW2 and Davinder Pal as PW3, both attesting witnesses. On the other hand, defendant no.1 examined his son Sakander Singh attorney as DW1 and also proved on record the same as Ex.D1.

Mr. Vaibhav Sehgal, learned counsel appearing on behalf of the appellant-plaintiff submitted that judgments and decrees of both the Courts below particularly of the Lower Appellate Court holding the agreement to sell to be forged and fabricated document, in the absence of the cross objections are not sustainable in the eyes of law. Once the defendants admitted thumb impressions on the agreement to sell, there was no need to take the assistance of the expert to prove the same. There was no cutting on the endorsement dated 15.06.2005 whereby a sum of Rs.7.00 lakhs was paid and received by the defendants. Even if the plaintiff being purchaser did not append the signatures, signature of the vendor is a valid transaction in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Alka Bose Vs. Parmatma Devi and others 2009(1) Civil Court Cases 412(SC)**. The readiness and willing was proved to the hilt as the suit was filed on 03.01.2006, thus, in all, a sum of Rs.12.00 lakhs against the total sale consideration of Rs.50.00 lakhs had already been paid. Non-examination of Amarjit Singh cannot be fatal.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Sehgal, for, the best possible witness i.e. Amarjit Singh, who had entered into agreement to sell though without any authority in his favour on behalf of the plaintiff, has not been examined. In fact, there was no contract between the plaintiff and defendants.

Assuming for an argument sake, stamp papers signed by the vendor handed over to the vendee without her signatures, is recognized in law, the plaintiff was required to prove by bringing on record some passbook of statement of accounts to establish that aforementioned amount was withdrawn, for, in her cross examination, she admitted that Rs.5.00 lakhs was not paid in her presence.

During the course of hearing, it was argued that Rs.5.00 lakhs was paid by her in the presence of Amarjit Singh to the respondent-defendants while standing in the agricultural land i.e. subject matter of the suit land.

In my view, the plaintiff has miserably failed to prove the intention of the parties to buy and sell the land. Even the readiness and willingness was also not there, as there is no recital in the agreement to sell with regard to any dispute qua possession giving an occasion to the plaintiff to seek demarcation on the target date which could have been done much earlier.

In fact, the plaintiff ought to have approached the Sub-Registrar for extending the target date through legal notice is unilateral act which cannot be said to be falling within the expression of provisions of Section 16(c) of Specific Relief Act.

All these facts have been examined in detail by the Courts below, in other words, the plaintiff has miserably failed to prove the sum of Rs.12 lakhs entitling her for alternative relief.

As an upshot of my findings, arguments of Mr. Sehgal, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 20, 2019
savita

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