

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

RSA No.173 of 2018(O&M)
Date of decision: 23.10.2019

Satya Kaur

... Appellant

Versus

Kulwant Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Neveen Batra, Advocate, for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was decreed qua an alternative relief for recovery of Rs.8,06,000/- along with interest vide judgment and decree dated 28.10.2013, rendered by the trial Court. For the appeal preferred against the said decree failed and was dismissed on 15.10.2016, defendant-Satya Kaur is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for possession by way of specific performance of the agreement to sell dated 09.10.2007, for a land measuring 13 marlas, comprised in khasra No.19R//10/2(1-17) and 4 marlas comprised in khasra No.19R/10/2 along with the house constructed thereupon with the passage situated in village Talwandi Sallan, Tehsil Dasuya, District Hoshiarpur. In the alternate, a prayer for recovery of Rs.16,12,000/- with interest was also made.

In brief, the case set out by the plaintiff was that parties entered into an agreement to sell dated 09.10.2007, for a total sale consideration of Rs.10,00,000/-. Rs.6,50,000/- were received by the defendants as earnest money. The date fixed for execution and registration of the sale deed was on or before 09.10.2008. However, on 08.10.2008, upon a request of defendant No.1, the date of execution of the sale deed was extended to 10.10.2009 and further a sum of Rs.1,56,000/- were paid to defendant No.1. Accordingly, the defendants received the total earnest money of Rs.8,06,000/-. Writing in this regard was duly recorded on the back of the agreement. For 10.10.2009 and 11.10.2009 were holidays, the plaintiff remained present in office of Joint Sub Registrar on 12.10.2009 to perform her part of the agreement. However, defendants did not turn up to execute the sale deed, thus, the suit.

In the written statement filed by the defendants, it was pleaded that defendant No.1 was neither the owner of the suit property nor had any authority to act on behalf of defendant No.2, who was residing at abroad and never authorized defendant No.1 to alienate the suit property. In fact, defendant No.1 borrowed Rs.3,25,000/- from the plaintiff to send her son abroad. For plaintiff demanded some security to secure her interest, defendant No.1 purchased stamp papers and handed over to the plaintiff upon which she obtained signatures of defendant No.1. However, subsequently plaintiff fabricated those documents and forged the agreement in question. For defendant No.1 had even returned the borrowed amount, it was prayed that suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that it was duly proved on record that defendant No.1 had executed the agreement to sell dated

09.10.2007 (Ex.P1) in favour of the plaintiff and received Rs.8,06,000/- as earnest money. For to prove the agreement as also the receipt of earnest money by defendant No.1, plaintiff examined Dalbir Singh (PW1), Stamp Vendor, who testified that stamp papers upon which the agreement was written were purchased by defendant No.1 from him. The necessary entries in this regard were duly incorporated in his register, which too were signed by defendant No.1-Satya Kaur. He proved the certified copy of the entry of register as Ex.PW1/A. Further, Swaran Dass (PW2), an attesting witness of the agreement to sell and endorsement Ex.P2, testified in his deposition that the agreement was executed by defendant No.1 in favour of the plaintiff on receipt of Rs.6,50,000/- as earnest money. He also proved the writing Ex.P2 on 08.10.2008, whereby, the date fixed for execution of the sale deed was extended and a further sum of Rs.1,56,000/- were paid to defendant No.1. However, suit property comprised in khasra No.19//10/2 and the jamabandi for the year 2003-04 (Ex.P4) revealed that defendant No.1 was not reflected as owner of the suit property. And, in fact, her husband defendant No.2-Balwinder Singh was a co-sharer qua the land comprised in the said number. Not only that, in the agreement (Ex.P1) itself it was recited that subject matter of the agreement was not under the ownership of defendant No.1 and rather the property was owned by Balwinder Singh husband of defendant No.1. No evidence was led by the plaintiff to show if defendant No.1 was authorized, in any manner, by defendant No.2 to execute the agreement (Ex.P1) on his behalf. That being so, defendant No.2 was not bound by the agreement dated 09.10.2007. Thus, plaintiff was not entitled to the decree for specific performance. But likewise, even defendant No.1 failed to substantiate the plea that she had obtained loan from the plaintiff. The

document (Mark A) relied upon by defendant No.1 to prove that she had returned the alleged loan also remained unsubstantiated for lack of any evidence. Even otherwise, the said document (Mark A) was relied upon by the defendants for the first time during her cross-examination. On the contrary, execution of the agreement as also the receipt of Rs.8,06,000/- were duly proved, therefore, in the given situation the plaintiff was entitled to the decree for recovery of Rs.8,06,000/-.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

23.10.2019
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO