

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

RSA No. 3160 of 2018(O&M)

Date of decision: 1.5.2019

Vidhya Devi

.....Appellant

VERSUS

Bijender

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ramesh Malik, 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 agreement to sell dated 29.05.2007 in respect of house No.509, EWS, Housing Board Colony, Sector- 2, 3, 4, Rohtak was decreed by the trial Court vide judgment and decree dated 15.07.2016 that came to be affirmed in appeal filed by unsuccessful defendant (appellant herein).

Counsel for the appellant has assailed consistent findings of the Courts primarily on two counts. The first submission made by counsel is that as the house in question was given to the appellant on hire-purchase basis by the Housing Board, Haryana, the appellant was not owner of the suit house, thus, incompetent to enter into an agreement of sale which can be specifically enforced through process of the Court. Another submission made by counsel is that the trial court in para 24 of the judgment has held that statement of defendant – Vidhya Devi Ex.P32 coupled with reply to

legal notice Ex.P15 shows that her admission is correct and true. It is argued with vehemence that this is never the plea of respondent/plaintiff that Vidhya Devi ever responded to any notice much less notice Ex.P15 but on the contrary it has been pleaded that notices dated 25.06.2007 and 31.07.2007 were not received by the appellant and she avoided to receive those notices and in response to notice dated 14.09.2007, no reply was submitted by Smt. Vidhya Devi, therefore, findings recorded by the Courts with regard to any reply to legal notice or admission by Vidhya Devi in such reply are the result of non-application of mind and misreading of evidence, therefore, cannot be allowed to sustain.

I have heard counsel for the appellant, perused the paper-book and original records of trial Court.

A plain but careful reading of written statement filed by the appellant makes it evident that no such plea was raised by the appellant that she is purchaser of the suit house under a hire-purchase agreement or was not competent to enter into alleged agreement to sell dated 29.05.2007. On the contrary, in response to paras 1 to 4 of the plaint, it has been specifically admitted that the house in question bearing No.509 is owned and possessed by the answering defendant and she was owner and in possession of the same on 29.05.2007. In this view of the matter, first contention raised by counsel for the appellant is patently misconceived and accordingly rejected.

This brings the Court to the second submission with regard to agreement of sale dated 29.05.2007. No doubt, it is not plea of the respondent/plaintiff that Vidhya Devi responded to any of the three notices

alleged to be issued by the plaintiff/respondent. However, it is undisputed position of the case that earlier the suit for specific performance was decreed ex parte and Vidhya Devi filed an application under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree. In those proceedings, Vidhya Devi appeared as her own witness. Her affidavit in chief examination, statement tendering affidavit by way of examination in chief and cross examination are Ex.P30 to P32, respectively. In her cross examination conducted on 03.03.2011, she has candidly admitted execution of agreement of sale dated 26.05.2007. She made vital admissions with regard to the terms and conditions settled between the parties. She had stated that as per the agreement, it was agreed that the remaining installments of the house in question would be paid by the vendee. In view of admissions made by Vidhya Devi in her previous statement Ex.P32, the Courts have rightly held that there cannot be better evidence than that of admission made by a contesting party. There is nothing on record suggestive of the fact that Vidhya Devi ever withdrew from those admissions much less in accordance with law. In the given scenario, even if findings of the Courts with regard to Vidhya Devi having filed reply to any notice issued by the respondent are ignored, the same would be inconsequential much less to establish that consistent findings recorded by the Courts suffer from perversity and liable to be interfered with.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine. Original records of trial Court be sent back to the quarter concerned.

MAY 1, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no