

RSA No.4407 of 2018 (O&M)

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

RSA No.4407 of 2018 (O&M)
Date of Decision: 17.07.2019

Chanchal Kumari

...Appellant

Versus

Arjun Shah Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Rajesh Lamba, Advocate, for the appellant.

RAMENDRA JAIN, J. (ORAL)

Through this Regular Second Appeal, defendant No.1 has laid challenge to the concurrent findings of both the Court below decreeing the suit of respondent No.1-plaintiff for recovery of ₹3.75 lakh along with interest @ 6% per annum from the date of passing of sale consideration till realization, instead of granting him relief of specific performance.

Briefly, appellant-defendant No.1 was owner of a plot in Sector 12, Faridabad, which she agreed to sell to the respondent No.1-plaintiff on 07.09.2004 for a sale consideration of ₹37.50 lakh, out of which 10% of the sale consideration i.e. ₹3.75 lakh was paid as earnest money vide written agreement Ex.P1. The agreed date of execution and registration of sale deed amongst them was 06.12.2004. However, sale transaction amongst parties did not materialise for one reason or the other, for which both the sides started blaming each other. Finally, respondent No.1-plaintiff filed a suit for specific performance, pursuant to aforesaid agreement to sell Ex.P1

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against the appellant-defendant No.1 and her subsequent vendees which after holding trial was partly decreed by the trial Court vide judgment and decree dated 24.05.2016, thereby directing the appellant-defendant instead of performing specific part of the contract to refund the earnest money to the tune of ₹3.75 lakh along with interest @ 6% per annum from the date of passing of sale consideration till realization.

Being aggrieved, appellant approached the first appellate Court, but remained unsuccessful as her appeal too was dismissed by the appellate Court vide judgment and decree dated 08.05.2018.

Learned counsel for appellant-defendant No.1 *inter alia* contends that there was no pre-condition in the agreement Ex.P1 before execution of sale deed on 06.12.2004 to seek prior permission from the Haryana Urban Development Authority, which had allotted the plot to appellant-defendant No.1. Both the Courts below have failed to appreciate that appellant-defendant No.1 was very much ready and willing to perform her part of the contract and for that reason she remained present in the office of concerned Sub-Registrar, Faridabad to register the sale deed in favour of respondent No.1-plaintiff, whereas respondent No.1-plaintiff did not turn up. Both the Courts below also failed to appreciate that respondent No.1-plaintiff intentionally and deliberately did not come present before the concerned Sub-Registrar for execution and registration of sale deed as he was not having balance sale consideration.

Having given thoughtful consideration to the submissions made by learned counsel for the appellant, this Court finds the instant Regular Second Appeal completely devoid of any merit for the reasons to follow.

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No question of law much less substantial has been raised in this appeal. Therefore, same is held not maintainable.

Appellant-defendant No.1 was allottee of the disputed plot by Haryana Urban Development Authority. In such allotments, there is always a condition in the allotment letter that in case of transfer of the property allotted to him/her, the allottee would seek prior permission from the Haryana Urban Development Authority. Therefore, in the instant case, even if, there was no recital qua obtaining prior permission by appellant-defendant No.1 from the Haryana Urban Development Authority, before execution and registration of sale deed in favour of respondent-plaintiff, but since, it was a mandatory condition to obtain permission prior to execution and registration of the sale deed by a allottee, therefore, it was bounden duty of appellant-defendant No.1 to complete all formalities to fulfil her part of promise in favour of respondent No.1-plaintiff.

It is pertinent to mention that readiness and willingness of respondent No.1-plaintiff is well-proved on the record from his act and conduct that much prior to the alleged date of execution and registration of sale deed he issued a legal notice Ex.P3 to appellant-defendant No.1, which she replied after the agreed date for execution and registration of sale deed. That apart, readiness and willingness of respondent No.1-plaintiff is further proved from his action of serving a legal notice to the Haryana Urban Development Authority to not to issue any permission to appellant-defendant No.1 to transfer the suit property in favour of third person.

Admittedly, appellant-defendant No.1 did not seek any prior permission for execution and registration of sale deed. Therefore, both the

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Courts below rightly held that she failed to perform her part of contract. *Mala-fide* and dishonest intention of appellant-defendant No.1 is well-proved on the record as she took contrary stands inasmuch as at one point of time she completely denied execution of agreement to sell Ex.P1 by her in favour of respondent No.1-plaintiff taking plea that she had given some blank signed papers to him to seek requisite permission, which he fraudulently converted into agreement to sell Ex.P1 and at another point of time admitting the execution of agreement to sell in question she pleaded that respondent No.1-plaintiff was not ready and willing to perform part of the contract. Above conduct of the appellant clearly shows that she sold the plot in question, to third person hurriedly as soon as she was offered more sale consideration than agreed by her with respondent No.1-plaintiff.

I have gone through judgments of both the Courts below and find no illegality or perversity in the same.

Dismissed.

July 17, 2019
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No