

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

**RSA No.6122 of 2017 (O&M)
Date of Decision.07.03.2019**

Nidhi Rani

...Appellant

Vs

Suraj Bhan and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.L. Sharma, Advocate
for the appellant.

Mr. S.S. Virk, Advocate for
Mr. Arvind Rajotia, Advocate
for caveator.

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AMIT RAWAL J. (ORAL)

C.M. No.15991-C of 2017

For the reasons stated in the application, delay of 73 days
in re-filing of the appeal is condoned.

Application is allowed.

RSA No.6122 of 2017

The short point involved in the present appeal is whether
for the same land, two agreements to sell dated 09.10.2006 and
11.11.2006 in favour of different persons can be executed and decree
for specific performance can be passed by two different courts, the
answer would be 'no'.

In another RSA No.6306 of 2017, this Court had already
issued notice of motion which has been accepted by the counsel
appearing for caveators. However, in the instant case, appellant-
plaintiff sought specific performance of the agreement to sell dated
11.11.2006 allegedly entered into by the defendants for total sale

consideration of ₹45 lakhs against payment of ₹5 lakhs in respect of house No.2667/71/4 by fixing the target date as 31.03.2007. Another sum of ₹5 lakhs was received on 18.11.2006. Plaintiffs stated to have issued legal notice dated 06.03.2007 and reminder for appearing before the Registrar on 23.03.2007 as 31.03.2007 and 1.4.2007 were holidays.

In support of pleadings, plaintiffs examined Rajinder Kumar, deed writer as PW1, Hari Singh as PW2, Bhupender Kumar as PW3, Nidhi Rani as PW4, Shish Ram as PW5, Chetan Singh as PW6, Ved Parkash as PW7 and Ramesh Kumar as PW8. On the other hand defendants examined three witnesses and closed evidence.

The trial Court decreed the suit. For the sake of repetition, both the suit were tried by different Courts, however, appeals were allocated to one Additional District Judge and decided by same order by reversing the judgment and decree in both the cases holding that plaintiffs in both the cases were related to each other.

Mr. M.L. Sharma, learned counsel appearing on behalf of the appellants submitted that readiness and willingness, much less, payment of earnest money has been proved to the hilt. Defendants have not been able to controvert their signature on the agreement to sell, thus, there is illegality and perversity.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit. The factum of plaintiffs in suits bearing No.503 of 2007 filed with regard to agreement to sell dated 11.11.2006 and civil suit No.99 of 2007 with regard to agreement to sell dated 09.10.2006 being relatives is

not in dispute. There cannot be two decrees of specific performance of the same very property. In fact, attempt should be either of the parties i.e. plaintiffs or defendants particularly, who have received summons in both suits to get connected both the suits so that they could be tried together. Be that as it may, plaintiffs have miserably failed to prove readiness and willingness qua aforementioned agreement as statement of account did not reflect withdrawal of ₹5 lakhs paid towards earnest money.

In view of such circumstances, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 07, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No