

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

RSA No.1466 of 2019(O&M)

Date of decision: 19.2.2020

Krishna Ranga

.....Appellant

VERSUS

Virender Kumar Alias Virender Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajinder Goel, Advocate for the appellant.

Mr. V.K. Jindal, Senior Advocate with
Mr. Gopal Soni, Advocate for the caveator/respondent.

REKHA MITTAL, J.

The unsuccessful defendant against whom decree for possession by way of specific performance of agreement to sell dated 28.12.2009 was passed by the trial Court and affirmed in appeal has filed the instant appeal.

The dispute pertains to plot measuring 20 marlas (605 square yards approximately) i.e. 20/47 share out of land measuring 2 kanal 7 marlas detailed in para 2 of the judgment of trial Court, situated in village Sunderpur, Tehsil Thanesar District Kurukshetra. As per the agreement set up by the respondent/plaintiff, the appellant agreed to sell the aforesaid property for sale consideration of Rs.50 lakhs and received Rs.5 lakh towards earnest money at the time of execution of agreement dated 28.12.2009. The additional earnest money of Rs.15 lakh was agreed to be paid on 28.02.2010 and remaining sale consideration of Rs.30 lakhs to be

paid at the time of execution/registration of the sale deed on 02.05.2010. It is averred by the respondent/plaintiff that on 28.02.2010 as well as two days prior to 28.02.2010, he went to the defendant to pay the additional earnest money of Rs.15 lakhs but she refused to accept the said amount and postponed the matter by saying that she will receive the amount in presence of her husband and assured the plaintiff that sale deed will be executed in the month of April 2010 and they will receive the entire balance sale consideration of Rs.45 lakhs in lumpsum at the time of getting the sale deed executed and registered. When the plaintiff requested the defendant for fixing the date in the month of April for execution and registration of the sale deed, the appellant/defendant did not give any response. A legal notice dated 15.04.2010 was served through registered post requesting the appellant to execute the sale deed within 15 days from the date of receipt of notice but appellant failed to do so. The respondent approached the appellant continuously and she kept on assuring that the sale deed will be executed shortly. The target date i.e. 02.05.2010 was a holiday. On 03.05.2010, the respondent with prior intimation to the appellant came to the office of Sub Registrar, Thanesar along with balance sale consideration of Rs.45 lakhs and other expenses but the appellant did not turn up to execute the sale deed. He got an affidavit attested from Executive Magistrate/Sub Registrar, Thanesar regarding his willingness and readiness to perform his part of the agreement. The respondent came to know from reliable sources that the appellant had been negotiating to sell the suit land to some other person and requested her to execute the sale deed but she refused. Hence, the suit.

The appellant/defendant raised usual preliminary objections inter alia concealment of true and material facts, non-maintainability of the suit, estoppel, cause of action and locus standi etc. She submitted that the answering defendant was in need of money because she and her husband were constructing a house, situated at 918, Sector 3, Urban Estate, Kurukshetra. Husband of defendant was known to Karan Singh Rana of Rana Property Dealer, Kurukshetra and approached him (Karan Singh Rana) for a sum of Rs.5 lakhs and he showed his willingness to give money but sought collateral security. The agreement to sell was executed in respect of loan of Rs.5 lakhs taken from Sh. K.S. Rana. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

Additionally, it was pleaded that immediately after taking loan of Rs.5 lakhs in the name of appellant, her husband intimated to his Department vide letter dated 31.12.2009 received at Sr. No.1754 by the Department. There was no dispute between plaintiff, Karan Singh Rana and the defendant but later ill-will developed in the mind of Karan Singh Rana who taking undue advantage of signed papers started proclaiming it to be an agreement to sell. The appellant sent cheque No.139551 dated 08.04.2010 to K.S. Rana in the name of respondent because the loan was advanced by K.S. Rana in the name of plaintiff who is having not much position than that of a worker. The plaintiff and K.S. Rana are money-lenders and they have obtained countless agreements of loan in the shape of agreement to sell as admitted by the plaintiff while deposing before the Court in criminal complaint. The property in dispute was worth Rs.1 crore which has increased to Rs.1 ½ crores, thus, there was no occasion for the

appellant to sell the property at throw-away price of Rs.50 lakhs as alleged in the agreement. Even if the agreement is considered to be an agreement, the same has elapsed on 28.02.2010 because the plaintiff had to pay Rs.15 lakhs on that date but he failed to do so.

The trial Court framed issues noticed in para 6 of the judgment. The parties were permitted to adduce evidence in support of their respective contentions. Evidence adduced by the parties has been noticed in paras 7 and 8 of the judgment of trial Court.

The trial Court, on a detailed consideration of various aspects in view of warring claims raised by the parties, negated plea of the appellant that agreement to sell had been prepared either on blank signatures of appellant or the appellant had appended her signatures for the purpose of taking loan of Rs.5 lakhs from Sh. K.S. Rana of Rana Property Dealer. The Courts have also taken into consideration conduct of husband of the appellant, a Police Officer. Admittedly, the appellant is an Associate Professor in Department of Sanskrit of Kurukshetra University, Kurukshetra.

The Court in appeal has addressed issues raised in appeal threadbare and affirmed findings of the trial Court with regard to the appellant having entered into agreement to sell the plot in question by negating her defence plea that she signed blank papers at the time of alleged raising of loan of Rs.5 lakhs.

Counsel for the appellant has read findings recorded by the Courts in extenso but unable to advance any arguments much less meaningful that consistent factual findings recorded by the Courts with regard to agreement in question suffer from an error much less perversity.

To be fair to the appellant, counsel would argue that since husband of the appellant, three days after raising of loan, sent intimation to his department with regard to raising of loan which was diarized at Sr. No.1754 by the department, the same goes a long way to negate theory of agreement to sell propounded by the respondent and establishes plea of the appellant that she had raised loan of Rs.5 lakhs. Another submission made by counsel is that even if it is accepted that the appellant had entered into agreement to sell dated 28.12.2009, the respondent/plaintiff has failed to establish readiness and willingness to perform his part of the agreement. To bring home his contention, it is argued that plea of the respondent/plaintiff that he had approached the appellant on 28.02.2010 or two days prior thereto for payment of Rs.15 lakhs in terms of the agreement does not find corroboration from independent source much less documentary one. It is vehemently argued that as the respondent/plaintiff failed to discharge his obligation under the agreement to pay another sum of Rs.15 lakhs on or before 28.02.2010, it demolishes his plea that he always remained ready to perform his part of the agreement, therefore, judgments and decrees may be modified, at best, by allowing relief of recovery along with interest.

Counsel for the caveator/respondent, on the contrary, has supported concurrent findings recorded by the Courts with the submission that cock and bull story concocted by the appellant in respect of taking loan of Rs.5 lakhs or putting her signatures on blank papers is patently misconceived and has rightly been rejected by the Courts. It is argued that it is difficult to accept, by any stretch of imagination, that a person who is highly literate and working as Associate Professor in Kurukshetra University, Kurukshetra would append her signatures on blank papers at

the cost of misuse of those papers by creating a liability of any extent against the appellant. It is further argued that there is not even iota of evidence to prove that the appellant or her husband had been raising construction of a house in Sector 3, Kurukshetra because the appellant has not produced any documentary evidence with regard to her ownership of any such plot or getting sanctioned site plan for raising construction thereon. It is further argued that had it been true that appellant has raised a loan of Rs.5 lakhs for the purpose set-forth in the written statement, there was no reason for her to withhold the documentary evidence in her possession, sufficient to draw an adverse inference against the appellant. It is further argued that the Courts have noticed conduct of husband of the appellant who initiated criminal proceedings against K.S. Rana in which the respondent/plaintiff was summoned as a witness and confronted with questions only in respect of agreement of sale and nothing else.

To refute contention of the appellant that respondent was not ready and willing to perform his part of the agreement, it is argued that since the appellant has denied execution of agreement of sale, it is not open for her to raise an issue with regard to respondent being not ready and willing to perform his part of the agreement. In addition, it is argued that once the story of the appellant that he had appended her signatures on blank papers is falsified and belied and plea of the respondent/plaintiff with regard to execution of agreement of sale is accepted, there is no reason to reject plea of the respondent that he had approached the appellant on 28.02.2010 and two days prior thereto for making payment of Rs.15 lakhs in terms of the agreement more particularly in the circumstances that on 15.04.2010, he issued a notice calling upon the appellant to fix the date

in the month of April 2010 for execution of the sale deed and later appeared in the office of Sub Registrar on 03.05.2010 and thereafter instituted the suit on 18.01.2011.

I have heard counsel for the parties, perused the paper-book and records.

As has been noticed hereinbefore but for the sake of repetition, the Courts examined the issue of agreement of sale in minute details while adverting to various issues raised by the appellant, therefore, it is difficult to accept contention of the appellant that findings of the Courts on the aspect of agreement of sale either suffer from perversity or raise a question of law that needs determination by this Court.

Counsel for the appellant, in response to a query, would fairly inform that appellant did not examine a witness of the department of her husband to prove any such intimation sent by him with regard to his wife having raised loan of Rs.5 lakhs. This fact alone is sufficient to conclude that this document has been created by the appellant for the purpose of present suit and for that reason, she did not examine a witness from the department of her husband to prove the document, in accordance with law. The Courts have taken note of various facts and circumstances in respect of conduct of the appellant and her husband. The document with regard to sending intimation to department is another factor that reflects upon veracity of appellant and her husband. In this view of the matter, contentions raised by the appellant to assail the judgments qua agreement of sale are patently false and misconceived.

This brings the Court to the issue of readiness and willingness of the respondent to perform his part of the agreement. Before adverting to

the submissions made by counsel for the appellant, it is appropriate to note that consistent findings recorded by the Courts cannot be intervened merely because a different view is possible on re-appreciation of evidence. Counsel for the appellant has failed to point out any facts elicited in cross examination of respondent/plaintiff to create a slightest doubt in his version that he approached the appellant on 28.02.2010 and two days prior thereto for payment of Rs.15 lakhs and she refused to accept the money with the representation that her husband is not available or balance sale consideration of Rs.45 lakhs would be accepted on execution of sale deed in April 2010. The receipt of notice dated 15.04.2010 has been accepted. There is no such plea raised by the respondent that he had gone to pay Rs.15 lakhs to the appellant accompanied by another person, therefore, there was no occasion for the appellant to examine a witness to corroborate his version in this regard. Counsel for the appellant has also failed to point out any materials on record to show that the respondent was not in possession of sufficient funds to meet his obligation of payment of Rs.15 lakhs on 28.02.2010. This apart, perusal of the agreement would reveal that nothing has been provided therein that in case the vendee fails to pay Rs.15 lakhs on 28.02.2010 what adverse consequences would flow for the vendee much less that the agreement would stand cancelled or earnest money would be forfeited. Analyzed from any angle, contention raised by the appellant in respect of non-payment of Rs.15 lakhs on 28.02.2010 does not carry any weight, thus, untenable. Conversely, the respondent/plaintiff has adduced overwhelming evidence to establish plea of readiness and willingness to perform his part of the agreement. In view of the above, I do not find any reason to intervene.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

February 19, 2020		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no