

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3244-2015(O&M)
Date of decision: 27.02.2020

Navjot Kaur

.....Appellant

Versus

Jasbir Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.J.S.Lalli, Advocate for the appellant

Mr.S.C.Arora, Advocate for the respondents

ANIL KSHETARPAL, J. (ORAL)

The defendant-appellant has filed the present Regular Second Appeal against the concurrent finding of facts arrived at by the Courts below while decreeing the suit for possession by way of specific performance of agreement to sell dated 6.3.2008.

Execution of the agreement to sell dated 6.3.2008 on receipt of ₹2, 50,000/- is not disputed. As per agreement to sell, sale deed agreed to be executed on or before 30.6.2008 and the plaintiffs were required to pay additional sum of ₹3 lacs one month prior to the target date enabling the defendant-appellant to clear the loan from the Bank.

It is the case of the plaintiffs that they have visited the residence of the defendant on 29.5.2008 alongwith a sum of ₹3 lacs accompanied by Rakesh but defendant refused to accept the same. On the target date i.e. 30.6.2008 the plaintiffs visited the office of sub-

Registrar and got an affidavit attested in order to prove their presence.

The defendant claimed that the aforesaid amount of ₹ 3 lacs has not been paid and therefore, she also visited the office of the Sub Registrar and got her presence marked.

The plaintiff served a notice dated 11.7.2008 on the defendant-appellant calling upon her to come and execute the sale deed. The defendant replied to the aforesaid notice with assertion that since amount of ₹ 3 lacs has not been paid as agreed to, therefore, agreement to sell has come to an end.

On appreciation of evidence, both the Courts have recorded a finding of fact that plaintiffs were always ready and willing and they did visit the residence of the defendant-appellant offering the amount of ₹3 lacs and therefore, they are entitled to decree as prayed for.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant submits that there is no evidence that amount of ₹ 3 lacs was tendered/admitted to be paid to the defendant as stipulated. He further submits that in the affidavit dated 2.7.2008 the plaintiffs have not stated that they visited the residence of defendant on 29.5.2008 for payment of ₹ 3 lacs. He further submitted that even in the notice dated 11.7.2008 this fact was not asserted. He, hence, submitted that since the plaintiffs have failed to fulfil the reciprocal promise, therefore, the decree passed by the Courts below is erroneous.

On the other hand, learned counsel for the respondents has submitted that on appreciation of evidence both the Courts have found that on 29.5.2008 the plaintiffs did visit the residence of the plaintiff offering to perform their part of the contract. However, the defendant refused.

Learned counsel for the appellant has read over statement of defendant-Navjot Kaur. She has stated that because of rise in prices, she was not ready to perform her part of the contract. She has taken a stand that before the target date, defendant sent a notice to the plaintiffs to pay the amount of ₹ 3 lacs, however, no notice has been produced.

This Court has considered the submissions of the learned counsel for the parties and find no ground to interfere, particularly, when on appreciation of evidence both the Courts have decreed the suit. As regards contention of the learned counsel that failure on part of the plaintiffs to perform their part of the contract, the plaintiffs have appeared in evidence and specifically stated that they visited the residence of the defendant on 29.5.2008 alongwith ₹ 3 lacs accompanied by Rakesh but defendant refused to accept. This part of the evidence of the plaintiff has been accepted by the Courts to be reliable. Still further as noted above, the defendant although claims that she sent a notice to the plaintiffs before the target date but no notice was produced in evidence. As regards argument of the learned counsel for the appellant that on 2.7.2008, the plaintiffs in their affidavit have not stated that they visited the residence of defendant on 29.5.2008, it may be noted that the affidavit dated 2.7.2008 is only for the purpose of marking presence.

Similar is the position with regard to notice dated 11.7.2008 sent by the plaintiffs to the defendant. It may also be noted here that the plaintiffs filed the suit within two months from the target date. The defendant is wife of a revenue Patwari who has better knowledge of the law as compared to general public. Once the defendant when appeared in evidence has stated that because of increase in prices of the property in dispute, she was not ready to execute the sale deed, it is apparent that the defendant had no intention to honour the agreement.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Hence, dismissed.

27.02.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No