

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

RSA-2246-2014 (O&M)
Date of decision : 06.01.2020

Rashmi Rani

...Appellant

Versus

Kuldeep Bansal

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arihant Jain, Advocate and
Mr. Varun Jain, Advocate for the appellant.

Mr. S.S. Behl, Advocate and
Mr. Manmeet Singh, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below decreeing the suit for possession by way of specific performance of the agreement to sell dated 10.02.2001.

Plaintiff-respondent sought the relief on the basis of the agreement to sell dated 10.02.2001, whereby, the defendant had agreed to sell the residential house constructed on a plot measuring 4 marlas for a total sale consideration of ₹2,60,000/- while receiving earnest money of ₹2,00,000/-. As per the agreement to sell, the target date for execution and registration of the sale deed was fixed as 31.07.2002. The suit was instituted on 04.09.2002 i.e. after little more than a month from the target date for registration and execution of the sale deed.

Defendant-appellant contested the suit denying her signatures

on the alleged agreement to sell and pleaded that the agreement to sell is forged and fabricated. The defendant-appellant had mortgaged the house in question for securing a loan from the bank.

Both the Courts below on appreciation of evidence, have concurrently found that the agreement to sell has been successfully proved by the plaintiff and the plaintiff was always ready and willing to perform his part of the contract, whereas, the defendant was not ready to perform her part of the contract.

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 alongwith the record.

Learned counsel appearing on behalf of the appellant has submitted that this is the only residential house of the appellant and her family and, therefore, the Court committed an error in granting relief of specific performance of the agreement to sell. He submitted that the plaintiff-respondent can be well compensated by granting the appropriate compensation. He has relied upon the judgments passed by Hon'ble the Supreme Court in the case of **A.C. Arulappan Vs. Smt. Ahalya Naik, AIR 2001 SC 2783** and in the case of **Nanjappan Vs. Ramasamy and another, (2015) 14 SCC 341.**

On the other hand, learned counsel appearing on behalf of the respondent-plaintiff, has submitted that there is no specific issue of hardship and the defendant-appellant cannot invoke the jurisdiction of the High Court particularly when she had denied the execution of the agreement to sell which has been found to be factually incorrect.

On consideration of the matter, this Court does not find substance in the arguments of the learned counsel for the appellant for following reasons:-

- 1) No doubt, the defendant-appellant has taken the plea of hardship, however, it has come on record that the family of defendant was in financial mess and, therefore, agreed to sell their residential house to overcome from the financial difficulty. After receipt of substantive part of the sale consideration as earnest money now the defendant-appellant cannot be permitted to wriggle out of the liability created by the agreement to sell.
- 2) Further, both the Courts have already considered the submissions of the appellant with regard to hardship and found no substance therein, particularly when, the defendant-appellant had initially denied the execution of the agreement to sell and receipt of earnest money.
- 3) While granting decree for specific performance of the contract, the Court, no doubt has the discretion, however, the same has to be exercised in accordance with the well settled Principles of law. The discretion cannot be permitted to be exercised in an arbitrary manner.

Now let us examine the judgments which have been relied upon by the learned counsel for the appellant, in support of his submissions. In the case of A.C. Arulappan (Supra), the Court found on facts that the plaintiff had not approached the Court with the clean hands. The Court also found that there was the first agreement which was followed by the another agreement. In those circumstances, particularly when, the trial Court had declined the relief of specific performance, refuse to grant the decree for

specific performance of the agreement to sell.

As regards the judgment passed by Hon'ble the Supreme Court in the case of Nanjappan (Supra), it may be noticed that the first agreement was executed 27 years ago and the Court was faced with the situation where the trial Court had in exercise of its discretion refused to grant decree for specific performance of the agreement to sell. In these circumstances, Hon'ble the Supreme Court exercised its discretion.

In the present case, the facts are otherwise. The agreement to sell stands proved. The defendant-appellant has failed to draw attention of the Court to any significant fact disentitling the plaintiff to the decree. Both the Courts on appreciation of the evidence have found that the plaintiff is entitled to a decree for specific performance of the agreement to sell.

Keeping in view the aforesaid facts, this Court does not find any good ground to interfere with the concurrent findings of fact except the fact that the plaintiff-respondent shall be liable to deposit the balance amount of ₹60,000/-, if not already deposited, alongwith interest at the rate of 12% p.a. from the date of institution of the suit i.e. 04.09.2002 within 2 months.

With the aforesaid modification, the present Regular Second Appeal stands disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

06.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No