

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

**RSA No.2418 of 2014 (O&M)  
Date of Order:12.02.2020**

**Smt. Ramwati**

**..Appellant**

**Versus**

**Sohrab and another**

**..Respondents**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Sanjeev Kumar Bawa, Advocate,  
for the appellant.

Mr. Vipul Aggarwal, Advocate  
for respondent no.1.

**ANIL KSHETARPAL, J(Oral)**

Defendant no.2-appellant is in the regular second appeal against the judgment passed by the learned first appellate court decreeing suit for specific performance of the agreement to sell while reversing the judgment passed by the learned trial court granting only alternative relief.

In the present case, defendants did not choose to contest the suit. Learned trial court after noticing that defendant no.1 has executed a sale deed in favour of defendant no.2, did not choose to grant a decree of specific performance of the agreement to sell. However, learned first appellate court on re-appreciation of evidence found that the aforesaid sale deed in favour of defendant no.2 by defendant no.1 is after the agreement to sell was entered into by defendant no.1 in favour of the plaintiff, decreed the suit.

This court has heard learned counsels for the parties at length

and with their able assistance gone through the judgments and decrees passed by the courts below.

Learned counsel for the appellant submitted that since while filing a previous suit for grant of permanent injunction, plaintiff has disclosed a prior agreement to sell by defendant no.1 in favour of defendant no.2, therefore, the learned trial court correctly ordered refund of the earnest money. He further submitted that the learned first appellate court failed to notice this fact.

On the other hand, learned counsel for the respondents submitted that defendant no.2-Smt. Ramwati is aunt of defendant no.1-Smt. Bhagwati Devi.

This court has considered the submissions, however find no substance in the contention of learned counsel for the appellant.

The plaintiff had filed a previous suit for grant of decree of permanent injunction by pleading that defendant no.1 had disclosed that she had entered into an agreement to sell dated 19.04.2007 and consequently a sale deed dated 31.07.2007 has been executed in favour of defendant no.2. The plaintiff never admitted that there is a prior agreement to sell in favour of defendant no.2. It was for the defendants to produce and prove the alleged agreement to sell dated 19.04.2007. The pleadings in the previous suit cannot be construed as admission of validity/genuineness of the agreement to sell dated 19.04.2007. The admission of a fact has to be categorical and explicit. What has been pleaded by the plaintiff in the previous suit was only to the effect that defendant no.1 has disclosed that she had entered into an agreement to sell dated 19.04.2007. Hence, correctness of the agreement to sell dated 19.04.2007 was never admitted by

the plaintiff.

Since, the defendants have failed to plead or prove existence of prior agreement to sell by defendant no.1 in favour of defendant no.2, the learned first appellate court has correctly granted relief of specific performance of the agreement to sell. Further, defendants no.1 and 2 are closely related.

Dismissed.

**February 12, 2020**  
**nt**

**(ANIL KSHETARPAL)**  
**JUDGE**

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No