

In the High Court of Punjab and Haryana at Chandigarh

RSA-5499 of 2019 (O&M)

Date of Decision:17.1.2020

Harbans Kaur

---Appellant

vs.

Gurmit Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Amandeep Singh Rai, Advocate
for the appellant

Rekha Mittal, J.

CM No. 409-C of 2020

Heard.

Allowed as prayed for. Annexure A-1 is taken on record,
subject to just exceptions.

Main case

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for possession by way of specific performance of agreement dated 11.11.2008 in respect of land measuring 5 kanal 2 marlas, detailed in head note of the plaint, with consequential relief of permanent injunction restraining the appellant-defendant from alienating the suit land to any third person and in the alternative suit for recovery, was decreed by the trial court granting principal relief of specific performance vide judgment and decree dated

6.4.2017 that came to be affirmed in appeal filed by unsuccessful appellant-defendant.

Counsel for the appellant-defendant, in line with the allegations raised in the written statement, would argue that appellant never entered into any such agreement for sale of her land and she appended her signatures on the asking of respondent-plaintiff as Harjit Singh son of the appellant had executed agreement for sale of his share in the joint land. It is further argued that respondent-plaintiff has failed to prove that he always remained ready and willing to perform his part of the agreement. To bring home his contention, he has referred to affidavit Ex. P2 with regard to presence of respondent-plaintiff in the office of Sub Registrar, Jagraon on the target date. Counsel would argue that in para 1 of the affidavit, target date is mentioned as 20.11.2009. In para 2, the date of agreement is mentioned as 26.12.2008 as against pleaded case of the plaintiff that agreement was executed on 11.11.2008 and sale deed was agreed to be executed on 20.10.2009.

Indisputably, on the basis of agreement in question, Harjit Singh son of the appellant-defendant had already executed sale deed in favour of the respondent-plaintiff. As per defence set up by the appellant-defendant, she signed the agreement in token of acknowledgment of sale of his land by her son Harjit Singh. The appellant appeared in the witness box and even denied her signatures on the agreement sufficient to prove that she is not a truthful witness. Harjit Singh son of the appellant was not examined to corroborate her version as to the circumstances under which she appended her signatures on the agreement. There is no such plea raised by

the appellant that Harjit Singh is not maintaining cordial relations with her. Counsel has failed to make out a case for intervention in concurrent factual findings with regard to correctness of agreement to sell dated 11.11.2008 whereby the appellant agreed to sell the suit property by fixing the target date for registration of the sale deed on 20.10.2009.

Coming to the submissions with regard to readiness and willingness of the plaintiff to perform his part of the agreement, the mere fact that there are certain errors with regard to target date mentioned in para 1 of affidavit dated 20.10.2009 (Ex. P2) or date of agreement in para 2 thereof, by no stretch of imagination can be construed to negate plea of the respondent-plaintiff with regard to his readiness and willingness to perform his part of the agreement. Affidavit Ex. P2 was produced and proved to substantiate plea of the respondent that he had gone to the office of Sub Registrar on the date stipulated for execution and registration of the sale deed. In para 1 of the affidavit, there is reference that photocopy of agreement dated 11.11.2008 is appended with the affidavit. In para 1, the date of agreement has been correctly mentioned as 11.11.2008. As this affidavit was executed by the respondent on 20.10.2009 with regard to his presence on the target date, mention of the said date as 20.11.2009 in para 1, is of no consequence. It appears that this affidavit has been typed by a person who did not bother to record the dates correctly despite a copy of agreement being available with him and appellant can not derive any advantage thereof to find fault in consistent findings on the question of readiness and willingness of the respondent to perform his part of the agreement.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and
is accordingly dismissed in limine.

(Rekha Mittal)
Judge

17.1.2020
paramjit

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