

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-572-2020 (O&M)

Date of Decision:16.08.2021

Rajinder Kumar

....Appellant

VS

Usha Rani

....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Ajay Jain, Advocate
for the appellant

Mr. Rakesh Nagpal, Advocate
for the respondent

SUDHIR MITTAL, J. (Oral)

In this case, notice of the appeal was issued only to the limited extent of exploring the possibility of a settlement, the suit property being a residential house.

Learned counsel for the respondent has categorically said that there is no possibility of any compromise.

In this view of the matter, learned counsel for the appellant wishes to argue the appeal on merits. He has been permitted to do so.

The second appeal arises out of a suit for possession by way of specific performance of agreement to sell dated 19.03.2012. The suit property is a portion of a house (half share of 7 marlas). According to agreement, the total sale consideration was Rs. 8,50,000/-, out of which Rs. 1,50,000/- was paid as earnest money. Target date for execution of sale deed was fixed as 19.07.2012. However, by mutual consent, the target date was extended to 06.08.2012, 20.08.2012,

15.09.2012 and 21.09.2012, on which date the entire balance sale consideration

except Rs. 25,000/- was paid to the defendant and possession was handed over. Some time in May 2013, the plaintiff was forcibly dispossessed by the defendant leading to registration of an FIR. Thereafter, the plaintiff sent a legal notice to the respondent to come present and execute the sale deed but despite receipt of the same, he did not come forward and, thus, the present suit was instituted. The suit has been decreed by the trial Court and the defendants appeal there against has failed.

Learned counsel for the appellant has submitted that the findings of the Courts below that agreement to sell dated 19.03.2012 stood proved are erroneous and, thus, the suit could not have been decreed. It has also been submitted that specific performance of agreement to sell dated 21.09.2012 Ex. P-3 has not been sought and on this ground also the appeal is entitled to succeed.

Regarding the agreement to sell dated 19.03.2012 being a forged and fabricated document, no evidence has been pointed out which may lead to such an inference. Learned counsel for the appellant has only read portion of the judgments of the Courts below but mere reading of the same is not sufficient. Thus, the argument is rejected.

In respect of the second argument that specific performance of agreement to sell dated 21.09.2012 was never sought and the suit was, thus, not maintainable, a pointed query was put to learned counsel regarding the said objection having been raised either in the written statement or in the grounds of appeal filed before the first appellate Court. Learned counsel has not been able to point out such an objection. Thus, the same would be deemed to have been waived. Moreover, the agreement dated 21.09.2012 was not an agreement to sell. The judgments of the Courts below show that on receipt of balance sale consideration of Rs. 6,75,000/- receipt Ex. P-2 was executed and possession was

handed over vide agreement dated 21.09.2012. Thus, it was an agreement for transfer of possession. The said agreement was in continuation of original agreement to sell dated 21.09.2012 and there was no necessity of seeking specific performance thereof.

In view of the above, the appeal has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

16.08.2021
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Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No