

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

**RSA No.560 of 2019 (O&M)
Date of Decision: 17th May, 2022**

Sushila Bhatia & Another

...Appellants

Versus

Anil Kumar & Another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Amit Choudhary, Advocate
for the appellants.

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MEENAKSHI I. MEHTA, J.(ORAL)

Feeling aggrieved by the judgment and decree dated 27.02.2017 passed by learned Civil Judge (Junior Division) Faridabad (for short 'the trial Court') whereby the civil suit filed by the appellants-plaintiffs (here-in-after to be referred as 'the plaintiffs') against the respondents-defendants (here-in-after to be referred as 'the defendants') for seeking a decree for specific performance of the agreement to sell executed by defendant No.1 in respect of the suit property, along-with the consequential relief of permanent injunction for restraining defendant No.1 from alienating the suit property to any one in any manner and also for restraining the defendants or their agent etc. from interfering in their (plaintiffs') peaceful possession over the said property and from dispossessing them from the same, has been dismissed as well as by the judgment and decree dated 30.11.2018 handed down by learned Additional

District Judge, Faridabad (for short 'the lower Appellate Court') dismissing the appeal filed by them against the above-said judgment and decree dated 27.02.2017, they (plaintiffs) have preferred the instant appeal.

The plaintiffs filed the said civil suit against the defendants while averring that on 20.09.1992, defendant No.1 had executed an agreement to sell the suit property to plaintiff No.1 and later-on, he had also executed a general power of attorney in favour of plaintiff No.2. The plaintiffs had paid the entire amount of sale consideration to the said defendant but he was avoiding the execution and registration of the sale deed in pursuance of the above-said agreement. In their written statement, the defendants contested the claim of the plaintiffs, *inter-alia*, on the grounds that the said document was never intended to be construed to be an agreement to sell the suit property and moreover, the plaintiffs failed to pay the amount of Rs.2.90 lac within the stipulated period of 45 days.

The parties were put to the trial by framing the issues on 22.01.2016 and then, they led their evidence, oral as well as documentary, in support of their respective contentions and after appreciating and evaluating their evidence and hearing their learned counsel, the trial Court dismissed the suit vide the impugned judgment and decree dated 27.02.2017 and the appeal, as filed by the plaintiffs to lay challenge to the above-said judgment and decree, has also been dismissed by the lower Appellate Court.

I have heard learned counsel for the appellants in the present appeal and have also perused the file carefully.

Learned counsel for the plaintiffs contends that the entire agreed amount of sale consideration has already been paid to defendant No.1 but he did not get the sale deed executed and registered in favour of plaintiff No.1 in pursuance of the said agreement, i.e Exhibit P1 and the trial Court erroneously dismissed the civil suit filed by the plaintiffs for seeking specific performance of the afore-said agreement and learned lower Appellate Court has also wrongly dismissed the appeal preferred by the plaintiffs without considering the contentions, as raised by them, in the right perspective and therefore, the impugned judgments and decrees are not legally sustainable and the same deserve to be set aside.

However, I do not find the afore-raised contentions to be tenable at all because a perusal of the agreement to sell, Exhibit P1, reveals that it has nowhere been mentioned in the same that defendant No.1 would get the sale deed in respect of his share in the suit property executed and registered in favour of plaintiff No.1 on the payment of the amount of Rs.2.90 lac as sale consideration. To add to it, this document is purported to have been signed by Hem Raj Bhatia, Sham Lal Bhatia, Manohar Lal Bhatia and Harish Bhatia as the witnesses but the plaintiffs have not examined any of these persons as their witness while leading their evidence despite the fact that his testimony would have clinched the entire controversy between the parties to the present *lis*.

Further, though the plaintiffs claim to have paid the amount of sale consideration vide Exhibits P2, P2/1 and P3 but it is worth-while to point it out here that the total amount, as mentioned therein, comes out to

be Rs.5,000/- + Rs.25,000/- + Rs.1.95 lac = Rs.2.25 lac only. Moreover, both the Courts below have concurrently observed that the plaintiffs have not duly proved the said receipts. In these circumstances, the plaintiffs cannot be held to be entitled to seek the specific performance of the alleged agreement to sell, by defendant No.1.

As a sequel to the fore-going discussion, it follows that there is no illegality, infirmity, irregularity or perversity in the judgments and decrees as passed by both the Courts below, so as to call for any interference by this Court. Resultantly, the appeal in hand, being *sans* any merit, stands dismissed.

17.05.2022
seema

(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>