

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

268

**RSA-185-2021 (O&M)
Date of decision: 26.08.2022**

Komaljit KaurAppellant
Versus

Manjit Kaur and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Karanjit Singh, Advocate
for the appellant.

Mr. Nakul Sharma, Advocate
for the respondents.

MANJARI NEHRU KAUL, J. (ORAL)

Suit for possession by specific performance of agreement to sell dated 19.03.2014 with regard to property bearing market No.557/13, which is constructed over an area of 12 marlas 144 sq. ft. situated on the Court Road Patti, bearing its khata No.1841/2567 khasra No.1322 as per jamabandi for the year 2008-09 of Patti, Tehsil Patti, District Tarn Taran (hereinafter referred to as 'the suit property') along with consequential relief of permanent injunction was filed by the respondents/plaintiffs to restrain the appellant/defendant from alienating the suit property in favour of any person. The suit was decreed by the Trial Court vide judgment and decree dated 29.10.2018. The appeal preferred by the appellant/defendant against the aforesaid judgment and decree was dismissed by the Lower Appellate Court vide order dated 08.11.2019. The defendant is now before this Court in Regular Second Appeal.

Parties to the *lis* hereinafter shall be referred to by their original positions in the suit.

The pleaded case of the plaintiffs may be noticed as thus.

On 19.03.2014, the defendant entered into an agreement to sell (Ex.P2), the suit property, with the plaintiffs. It was agreed upon between the parties that the defendant would get the sale deed executed and registered in favour of the plaintiffs on or before 10.10.2015. The defendant was paid Rs.18,00,000/- as earnest money by the plaintiffs out of the total sale consideration of Rs.1,06,00,000/- at the time of execution of the agreement to sell dated 19.03.2014. It was also agreed upon by the parties that the remaining amount of sale consideration would be paid to the defendant at the time of execution and registration of the sale deed, and in case the defendant failed to execute and register the sale deed in favour of the plaintiffs on the stipulated date, the plaintiffs would stand entitled to amount of Rs.18,00,000/- as damages and compensation, for breach of contract, in addition to the earnest money paid to the defendant. It was further agreed upon that in case it was the plaintiffs who failed to get the sale deed executed and registered in their favour then the earnest money paid by the plaintiffs to the defendant would stand forfeited. The plaintiffs along with balance sale consideration etc. for execution and registration of the sale deed went to the office of Sub Registrar, Patti on 12.10.2015 since the office of the Sub Registrar was closed on 10.10.2015 and 11.10.2015 being Saturday and Sunday. The defendant, however, failed to turn up for executing and registering the sale deed in favour of the plaintiffs on 12.10.2015. The plaintiffs then got an affidavit attested from the Executive Magistrate, Patti and also got their presence marked before the Sub Registrar, Patti. The plaintiffs claimed that they were always

ready and willing to perform their part of the contract but the defendant had breached the terms and conditions of the contract as she was not ready and willing to execute and register the sale deed in favour of the plaintiffs since she was negotiating sale of the suit property with other persons. It was further claimed that despite approaching the defendant time and again, she failed to get the sale deed executed and registered in favour of the plaintiffs. Left with no other option, the plaintiffs filed the suit in question.

In her written statement, the defendant submitted that she was owner of only 12 marlas of land and not 144 sq. ft. as had been pleaded by the plaintiffs in the plaint. The defendant denied entering into agreement to sell (Ex.P2) dated 19.03.2014. It was submitted that there were only talks going on between the plaintiffs and defendant's brother namely Paramjit Singh qua the sale of the suit property. It was pleaded that though her brother Paramjit Singh had informed her that a deal had been struck between the parties for Rs.1,29,00,000/-, however, no amount of money as alleged had been received by her and the earnest amount had been paid to her brother Paramjit Singh. Thereafter, she in good faith had thumb marked and signed the agreement to sell which had not been read over to her nor explained by the scribe. The defendant, however, admitted that since 10.10.2015 was a Saturday, she went to the office of Sub Registrar, Patti on 12.10.2015 for getting the sale deed executed and registered in favour of the plaintiffs for land measuring only 12 marlas @ Rs.1,29,00,000/-, however, since the plaintiffs did not turn up, she got her presence marked before the Executive Magistrate, Patti by submitting an application.

In replication filed to the written statement of the defendant, the plaintiffs reiterated their averments made in the plaint and denied the contents of the written statement filed by the defendant.

On the basis of material on record and other evidence led, the Trial Court held the plaintiffs entitled to the relief of specific performance of the agreement to sell dated 19.03.2014. In addition, the defendant was also restrained from alienating or transferring or creating charge over the suit property in any manner in favour of any other person except the plaintiffs. The plaintiffs were directed by the Trial Court to pay the entire balance sale consideration within three months from the date of passing of the judgment and decree dated 29.10.2018 and on payment of the balance sale consideration, the defendant was further directed to execute and register the sale deed in favour of the plaintiffs within two months from the date of deposit of balance sale consideration. The judgment and decree of the Trial Court was affirmed and upheld by the Lower Appellate Court.

Learned counsel for the appellant/defendant has vehemently argued that the impugned judgments and decrees are perverse and liable to be set aside as the Courts below failed to appreciate the evidence led in the correct perspective. He submits that since the defendant was owner of only 12 marlas and not 144 sq. ft. of land, she could not have and would not have executed the sale deed and the agreement to sell (Ex.P2). It has also been submitted that a perusal of the contents of the agreement to sell (Ex.P2) leaves no manner of doubt that it is extremely vague in as much as the dimensions of the suit property have not even been mentioned and still further, the property

consists of many shops. It has still further been submitted that the agreement to sell could not have been enforced as firstly the defendant was not in possession of the property and secondly the shops on the suit property were occupied by tenants. Learned counsel has vehemently argued that since the defendant was illiterate, her brother Paramjit Singh took advantage of her illiteracy and got her signatures on the agreement to sell (Ex.P2) by lying to her about the fact that a deal had been struck for Rs.1,29,00,000/-whereas in the agreement to sell (Ex.P2) the deal was only for Rs.1,06,00,000/-. Learned counsel has submitted that in the alternative, the defendant was even ready to return Rs.18,00,000/- along with interest to the plaintiffs in case the plaintiffs/respondents were agreeable to the offer.

Per contra, learned counsel for the respondents/plaintiffs while opposing the submissions made by the counsel opposite, submits that not only has the defendant not denied the execution of the agreement to sell (Ex.P2) but ample cogent evidence had been led before the Courts below by the plaintiffs to successfully prove the execution of the agreement to sell dated 19.03.2014. He submits that the factum of the plaintiffs being always ready and willing to perform their part of the contract stands proved from their presence which was marked before the Sub Registrar, Patti on 12.10.2015. The learned counsel has on instructions, rejected the offer made to the plaintiffs by the appellant/defendant for refund of Rs.18,00,000/- along with interest.

I have heard learned counsel for the parties and perused the relevant material on record.

The defendant has not disputed the execution of agreement to sell in question (Ex.P2). It cannot be over-emphasized that admission is the best evidence against the person who makes such admission. PW4 Parvinderjit Singh, deed writer while stepping into the witness box, deposed on oath that the agreement to sell dated 19.03.2014 had been scribed by him at the instance of the defendant herself and still further the defendant had signed and thumb marked it after its contents were read over and explained to the parties. Plaintiff No.2 Harjinder Singh while stepping into the witness box as PW1 reiterated his pleaded case. The attesting witnesses to the agreement to sell Jagjit Singh and Parvinderjit Singh were subjected to a lengthy cross-examination. However, the defendant was unable to create any dent in their deposition. It is a matter of record that the defendant has not disputed her signatures on the agreement to sell (Ex.P2) and not even disputed that the agreement to sell (Ex.P2) between the parties was indeed arrived at. Though learned counsel for the defendant vehemently argued that the defendant was illiterate and her brother had procured her signatures on the agreement to sell and still further the sale consideration was for Rs.1,29,00,000/-, however, it stands admitted by the defendant that she is a matriculate. In the circumstances, she cannot be said to be illiterate. Still further, it is a matter of record and stands proved that not only are the defendant's signatures there on the agreement to sell (Ex.P2), but even her signatures are there in the register of the deed writer. The contentions of the learned counsel that the defendant was not owner of the suit property are devoid of any merit as the dispute as pleaded by the defendant herself is qua the price

of land which was to the extent of Rs.1,29,00,000/- and not Rs.1,06,00,000/-. Still further, the deposit of Rs.16,00,000/- stands reflected in the bank statement of the defendant and her daughter which was deposited by the plaintiffs out of the total earnest amount of Rs.18,00,000/-. The case of the defendant that no amount was paid to her stands demolished and is belied by her bank statements and her own admission that Rs.16,00,000/- had been deposited in her joint account with her daughter. She has further also admitted to the receipt of Rs.18,00,000/- in Ex.D4 i.e. the document in the shape of application moved by the defendant to Naib Tehsildar-cum-Sub Registrar, Patti on 12.10.2015 for marking her presence for the purpose of she being present for execution of the sale deed for Rs.1,29,00,000/-. Moreover, the allegation of cheating levelled by her against her brother is hit by her own conduct as she never moved any application or filed a complaint to the police in the said regard.

On being pointedly asked, learned counsel for the appellant/defendant failed to bring to the notice of this Court anything on record to show that the conclusions arrived at by both the Courts below were either contrary to record or suffered from any material illegality. In the circumstances, this Court does not find any error in the concurrent findings recorded by both the Courts. The appeal being devoid of merit is accordingly dismissed.

26.08.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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