

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1153-2022(O&M)
Date of Order: 26.05.2022

Mrs. Sarita Kadiyan

..Appellant

Versus

Krishna Devi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep K. Sharma, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

Defendant no.2 assails the correctness of the concurrent findings of fact arrived at by the courts below.

Some particular facts are required to be noticed.

The plaintiffs claiming to be the purchasers of the rights of defendant no.2, filed a suit for grant of the decree of mandatory injunction. They also claim that the communication dated 05.10.2005, issued by the Haryana Urban Development Authority be declared illegal, null and void.

The dispute is with regard to a commercial booth. The plaintiffs claim that Smt. Sarita Kadiyan (defendant no.2/appellant) on receipt of Rs.1,75,000/- (the total sale consideration) has handed over all the documents relating to its allotment to the plaintiffs. Smt. Sarita Kadiyan also filed an application for permission to transfer the commercial booth along with the requisite fee of Rs.2,725/- in favour of Haryana Urban Development Authority, on 05.09.2005. However, the Haryana Urban Development Authority objected to the transfer of the commercial booth.

The plaintiffs impleaded the Haryana Urban Development Authority as well

as Smt. Sunita Kadiyan as defendants. The Haryana Urban Development Authority admitted the receipt of application submitted by defendant no.2 along with the requisite fee.

On the other hand, the defendant took a stand that she never sold the property and in fact she borrowed Rs.50,000/- from the plaintiffs while handing over the documents as security. It was also claimed that the plaintiffs have taken signatures on the various blank papers from her.

Both the Courts on appreciation of evidence have recorded the concurrent findings of fact that the appellant agreed to transfer the allotment rights in favour of the plaintiffs on receipt of Rs.1,75,000/-. It has been noticed that defendant no.2 (the appellant) is having a M.A.BEd. degree (well educated). It has also come on record that defendant no.2 failed to prove that her signatures were taken on the blank papers or she never received Rs.1,75,000/-.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

The learned counsel representing the appellant contends that a suit for the grant of mandatory injunction was not maintainable. He contends that a suit for specific performance of the agreement to sell was the appropriate remedy.

It is evident that on the day the agreement to sell was entered into, defendant no.2 had not become the owner of the property. She only had allotment rights which were transferred. Both the courts have held that she is not only blowing hot and cold, at the same time, but also her conduct clearly proves that she after having received the amount is avoiding to perform her part of the contract.

As regards the maintainability, once there is no conveyance deed in favour of the appellant and the property is transferable in the record of the Haryana Urban Development Authority , the objection of the maintainability of the suit at the stage of Regular Second Appeal cannot be accepted.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

May 26, 2022

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(ANIL KSHETARPAL)
JUDGE

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