

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

129

RSA-3875-2019 (O&M)
Date of decision: 08.11.2023

SEEMA

..Appellant

Versus

SUDHIR KUMAR AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harsh Aggarwal, Advocate
for the appellant.

Mr. Kanwaljit Singh, Sr. Advocate
with Mr. Peeush Gagneja, Advocate
and Ms. Noble, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the correctness of the concurrent findings of fact arrived at by the Courts below is assailed by the defendants. The plaintiff (respondent herein) has filed a suit for possession by way of specific performance of the agreement to sell with a consequential relief of permanent injunction. He claimed that land measuring 16 biswas was agreed to be sold by the appellant vide agreement to sell dated 02.01.2010 on receipt of Rs.5,00,000/- as an earnest money out of total sale consideration of Rs.15,50,000/-. Subsequently, the aforesaid agreement to sell was notarized on 09.01.2010. The suit was filed on 13.04.2010. Although, as per the agreement to sell, the sale deed had to be registered on 02.11.2010. The plaintiff claims that the appellant has entered into further agreement to sell in favour of defendant No.2 to 4.

2. Defendant No.1 while contesting the suit submitted that she has entered into an agreement to sell with defendant No.2 on 22.03.2010 and the agreement to sell propounded by the plaintiff is a result of fraud. In order to

prove the agreement to sell Sh. Ram Bhola (stamp vendor) appeared in evidence. He proved entry No.23919, which was signed by defendant No.1 (appellant). Witness to the agreement to sell PW-2 Sh. Devinder Rana was also examined. PW-5 Sh. Shamsheer Singh (Notary Public) also proved entry in his register on 09.01.2010, which is signed by the appellant (defendant No.1). Apart therefrom, the plaintiff appeared in evidence as PW-4. When Smt. Seema (appellant) appeared in evidence, she admitted her signatures on the agreement to sell as well as in the register of the notary. Thus, both the Courts decreed the suit.

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

4. The learned counsel representing the appellant contends that the receipt of Rs.5,00,000/- was executed on March, 06th 2010. Photocopy of the agreement to sell has been annexed as Annexure A-1. It is evident that the aforesaid receipt has been typed after the recitals in the agreement to sell came to an end. It is executed on 02.01.2010. On being confronted, the learned counsel representing the appellant admitted this fact.

5. The next argument of the learned counsel representing the appellant is to the effect that the plaintiff (respondent No.1) is working as Peon and he does not have wherewithal to pay Rs.10,00,000/- as an earnest money pursuant to two agreements. He submits that the plaintiff has not disclosed his resources to the Court. He further submits that the suit filed by the plaintiff was premature in nature.

6. This Court has considered the submissions of the learned counsel representing the parties.

7. The plaintiff while appearing as PW-4 has stated that he has borrowed some amount from his friends and family members, whereas, the remaining amount was borrowed from commission agent because he is cultivating 12 acres of land. It may be noted here that the appellant (defendant No.1) is a graduate and she has signed the agreement to sell at four different places. The first page of the agreement to sell was duly signed by her. The agreement to sell has also been signed after the recitals in the agreement to sell come to an end. Thereafter, the receipt of the amount has been separately typed, which is signed by her in a manner that half of her signature is on the revenue stamp, whereas, remaining half is on the paper. It has also come on evidence that the appellant purchased the stamp paper for execution of the agreement to sell on 02.01.2010, itself. In these circumstances, the payment of earnest money in cash cannot be a circumstance to discard the agreement to sell.

8. The last argument of the learned counsel representing the appellant has no substance because it is the positive case of the plaintiff that defendant No.1 (appellant herein) has entered into an agreement to sell that defendant No.2 to 4, which forced the plaintiff to immediately file the suit for possession by way of specific performance. Moreover, this objection has never been taken before the Courts below.

9. Hence, no ground to interfere is made out.

10. Dismissed accordingly.

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

November 08th, 2023

(ANIL KSHETARPAL)
JUDGE

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