

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

-.-

**RSA-3408-2019 (O&M)
Reserved on : 06.01.2023
Date of Decision : 10.01.2023**

Krishan Kanta

...Appellant

Versus

Balbir Singh

...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Munish Gupta, Advocate for the appellant.

ALKA SARIN, J.

The present regular second appeal has been preferred by the defendant-appellant against the judgments and decrees dated 19.01.2015 and 25.02.2019 passed by the Trial Court and the lower Appellate Court respectively, whereby the suit for specific performance filed by the plaintiff-respondent has been decreed qua grant of the alternate relief of recovery of Rs.2 lakhs.

The brief facts relevant to the present *lis* are that the defendant-appellant had entered into an agreement to sell dated 31.03.2004 with the plaintiff-respondent to sell land measuring 2 kanals and 7 marlas. Rs.2 lakhs was received by the defendant-appellant as earnest money and 20.03.2007 was fixed as the target date. The remaining sale consideration was to be paid at the time of execution of the sale deed. It was further averred that on 20.03.2007 the plaintiff-respondent remained present at the Tehsil Complex Garhshankar for getting the sale deed registered. However, the defendant-appellant did not show up with the balance sale consideration and an affidavit was also got attested qua the presence

of the plaintiff-respondent before the Executing Magistrate, Garhshankar on 20.03.2007. It was averred that the defendant-appellant had failed to perform his part of the contract of the agreement.

On notice, the defendant-appellant appeared and denied the agreement to sell in toto. It was further the stand taken that the agreement to sell in question was a forged and fabricated document and it did not bear her signatures. It was further averred that the defendant-appellant had already entered into an agreement to sell dated 20.07.2004 qua the suit land with one Roshan Lal s/o Milkhi Ram and that the plaintiff-respondent was one of the attesting witness to the said agreement to sell in favour of Roshan Lal.

Replication to the written statement was filed reiterating the version of the plaintiff.

On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the defendant entered into an agreement to sell with the plaintiff on 31.03.2004 for sale of the suit property for a consideration of Rs.3,00,000/- and received the sum of Rs.2,00,000/- as earnest money in the presence of the witnesses ? OPP
2. Whether plaintiff always remained ready and willing to get the sale deed executed in terms of the agreement to sell dated 31.03.2004 ? OPP
3. Whether plaintiff is entitled to the relief of specific performance of agreement to sell dated 31.03.2004 ? OPP
4. If issue No.3 is not proved, whether plaintiff is entitled to the alternative relief of recovery ? OPP

5. Whether plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP
6. Whether the agreement to sell dated 31.03.2004 is forged and fabricated and does not bear signature of defendant ? OPD
7. Whether the plaintiff has not come to the court with clean hands and has material facts ? OPD
8. Relief.

The Trial Court vide impugned judgment and decree dated 19.01.2015 decreed the suit granting to the plaintiff-respondent the alternative relief of recovery of earnest money of Rs.2 lakhs along with interest. Aggrieved by the said judgment and decree, the defendant-appellant preferred an appeal. Vide the impugned judgment and decree dated 25.02.2019, the appeal was dismissed by the lower Appellate Court. Hence, the present regular second appeal.

Learned counsel for the defendant-appellant would contend that the agreement to sell has not been proved and nor was the plaintiff-respondent able to prove his readiness and willingness and therefore both the Courts have erred in decreeing the suit.

Heard.

In the present case the defendant-appellant only examined herself as DW1 while leading her evidence. No other witness was produced by her. The plaintiff-respondent in order to prove his case appeared in the witness box as PW1, he produced Avtar Singh as PW2 who is the marginal witness of the agreement to sell and also produced Kranti K. Sharma as PW3 who is a document and Hand Writing Expert. The document expert Kranti K. Sharma

PW3 in his report Ex.PW3/1 opined that the signatures on the agreement to sell were those of the defendant-appellant. The defendant appellant failed to examine any handwriting expert to rebut the said report. The defendant-appellant further failed to examine Roshan Lal in whose favour she had alleged to have executed an agreement to sell dated 27.01.2004 which was allegedly witnessed by the plaintiff-respondent. It is apt to note that even the agreement to sell dated 27.01.2004 was not produced in evidence. There is not an iota of evidence led by the defendant-appellant to rebut the evidence led by the plaintiff-respondent.

In view of the above and in view of the concurrent findings of facts returned by both the Courts below, I do not find any merit in the present regular second appeal. No question of law much less any substantial question of law arises in the present appeal which is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

10.01.2023
tripti

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO