

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

RSA-2034-2022 (O&M)

Date of Decision: October 10, 2023

MEWA DEVI

..... Appellant

Versus

RAJBIR AND ANOTHER

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Gaurav Rana, Advocate for the appellant.
Mr. Vishal Nehra, Advocate for respondents.

HARKESH MANUJA, J. (ORAL)

In the present appeal, challenge has been laid to the judgments and decrees dated 23.09.2019 and 19.07.2022 passed by the Courts below whereby, a suit for possession by way of specific performance besides seeking declaration as well as permanent injunction, filed at the instance of respondent No.1-plaintiff has been decreed.

2. Briefly stating, based on an agreement to sell dated 27.09.2012, respondent No.1-plaintiff filed a suit for possession by way of specific performance regarding land measuring 2 Kanals and 16 marlas, situated in the revenue estate of village Fazilpur Badli, Tehsil Farrukh Nagar, District Gurugram. It was further prayed that appellant-defendant No.2 be restrained from alienating the suit property besides seeking declaration qua sale deed dated 30.10.2012 executed by respondent No.2 in favour of appellant. As per the plaint, the total sale consideration was Rs.15,00,000/-; whereas Rs.7,00,000/- was paid as earnest money and the target date was fixed as 27.03.2013. It was also

pleaded that respondent No.2-defendant No.1 sold the suit property in the name of appellant-defendant No.2 vide registered sale deed dated 31.10.2012 so as to defeat the rights of respondent No.1-plaintiff thereby, compelling him to file present suit impugning the validity of sale deed dated 31.10.2012 as well.

3. Upon notice, respondent No.2-defendant No.1 appeared and denied the execution of agreement to sell dated 27.09.2012 while stating it to be a false, frivolous and fabricated document. It was further pleaded that agreement to sell dated 31.07.2012 was executed by respondent No.2-defendant No.1 in favour of appellant-defendant No.2 and in pursuance thereof, a sale deed dated 31.10.2012 was executed between them. Similarly appellant-defendant No.2 filed separate written statement while claiming herself to be the owner-in-possession of suit property by virtue of sale deed dated 31.10.2012 based on agreement to sell dated 31.07.2012.

4. The trial Court vide judgment and decree dated 23.09.2016 decreed the suit filed by respondent No.1-plaintiff. Aggrieved thereof, appellant-defendant No.2 filed First Appeal, however, the same was dismissed by the Appellate Court vide judgment and decree dated 19.07.2022.

5. Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for the appellant submits that in the present case, agreement to sell dated 27.09.2012 was an act of collusion between respondent No.1-plaintiff and respondent No.2-

defendant No.1 as they were both closely related to each other. He also submits that once the valid execution of agreement to sell dated 31.07.2012 in favour of appellant-defendant No.2 was admitted by respondent No.2-defendant No.1, there was no occasion to have initiated criminal proceedings against him. To add, he also points out that against payment of Rs.7,00,000/- as earnest money towards total sale consideration of Rs.14,00,000/-, non-delivery of possession in favour of vendee itself created doubts about the valid execution of agreement dated 27.09.2012. Learned counsel further points out that the mothers of both the respondents are real sisters. He also submits that one of the marginal witness to the agreement dated 27.09.2012 was Chander Bhan (PW-3) who happened to be real brother of respondent No.2-defendant No.1. Learned counsel further submits that present suit was filed on 19.12.2012 and all through till 07.09.2013, respondent No.2-defendant No.1 continued to appear in the trial, however, the moment evidence was over, he discontinued to appear in the suit. He also points out that findings recorded by the First Appellate Court to the effect that the appellant-defendant No.2 was having no authority to assail the agreement entered into between respondents No.1 and 2, was wholly illegal and perverse and thus concludes that the judgments and decrees passed by the Courts below were liable to be set aside. No other argument has been addressed.

6. I have heard learned counsel for the appellant and gone through the paper-book. I am unable to find substance in the submissions made on behalf of the appellant.

7. In the present case, respondent No.1-plaintiff has been able to prove on record the valid execution of registered agreement to sell dated 27.09.2012 (Ex. P-2) through the marginal witnesses, namely, Dharmender and Channder Bhan who appeared as PW-2 and PW3 as well as PW-4 Sudhir Kumar (Clerk from Sub-Registrar Office) and despite they having been cross-examined at length, their testimony could not be impeached by the appellant-defendant No.2 as regards the valid execution of agreement dated 27.09.2012.

8. On the other hand, neither appellant-defendant No.2 herself appeared as witness in support of the transaction nor has she been able to prove the valid execution of agreement to sell dated 31.07.2012 (Ex. DW2/3) otherwise even. Right from the inception i.e. from the date of issuance of stamp paper, it creates doubt as DW-7 who happened to be a stamp vendor produced his register as DW-7/A, recording entry No.49905 for having sold stamp paper in favour of Zile Singh s/o Amar Singh on 31.07.2012 which was allegedly used for the purpose of execution of agreement to sell dated 31.07.2012, however, against the said entry, admittedly there were no signatures of Zile Singh s/o Amar Singh but thumb marks whereas everywhere else, Zile Singh used to sign and those thumb impressions were not even proved. Once, purchase of stamp paper used for the purposes of execution of agreement to sell dated 31.07.2012 was doubtful, in the absence of examination of Zile Singh S/o Amar Singh to support the said purchase, the Courts below were right in believing and discarding the said

agreement, especially when none of the marginal witness belong to the same village to which the parties to it belonged.

9. As regards the argument raised on behalf of the appellant-defendant No.2 regarding the close relationship of respondent No.1-plaintiff as well as respondent No.2-defendant No.1, it may be pointed out here that admittedly, the appellant-defendant No.2 happens to be sister-in-law of respondent No.1-plaintiff, especially residing in the same village. Besides it, one of the brothers of respondent No.2-defendant No.1 being the marginal witness to the agreement to sell dated 27.09.2012 cannot by any stretch of imagination be taken to be as a suspicious circumstance because the vendor or vendee would definitely want their close and known to witness the transactions relating to their properties. Rather it goes to add to the genuineness of the aforesaid agreement in favour of respondent No.1. Further, mere non-delivery of possession in pursuance of agreement to sell, despite having paid half of the sale price cannot be taken to be as suspicious circumstance about its valid execution especially, in the facts wherein maximum period for execution of sale deed as per terms of agreement was six months. Contrarily, the variance in the statements of the husband of appellant while appearing as DW-2 and the marginal witness Prem Chand about the attestation of agreement itself created doubts about its valid execution.

10. Accordingly, in view of the discussions made hereinabove, finding no illegality or perversity with the concurrent findings of fact

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recorded by the Courts below as well as valid execution of Agreement to Sell dated 27.09.2012 besides, the readiness and willingness on the part of respondent No.1/plaintiff with there being no misreading of the material document or ignorance of the pleadings or evidence available on record, the present appeal is dismissed.

11. Pending application(s), if any, shall also stand disposed of.

10.10.2023
tejwinder

(HARKESH MANUJA)
JUDGE

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