

132 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2852-2023(O&M)
DECIDED ON: 09.10.2023

SATYA WATI AND OTHERS

.....APPELLANTS

VERSUS

SARLA RANI AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Parminder Singh, Advocate
for the appellants.

VIKRAM AGGARWAL, J (ORAL)

1. This is defendant's second appeal against concurrent findings recorded by both Courts i.e. the trial Court and the First Appellate Court. A suit for symbolic possession of the ground floor and first floor and for possession of second floor of a building situated at Buria Gate, Jagadhari (hereinafter referred to as the 'disputed building') was filed by way of specific performance of agreement to sell dated 20.05.2009. This suit was decreed by the Court of Civil Judge (Senior Division), Yamuna Nagar at Jagadhari vide judgment and decree dated 28.10.2016. An appeal was preferred by the appellant-defendant, which was also dismissed by the Additional District Judge, Yamuna Nagar at Jagadhari vide judgment and decree dated 15.05.2023 leading to the filing of the present second appeal.

2. The respondent-plaintiff filed a suit for symbolic possession of the ground floor and first floor and for possession of second floor of a three storey building (fully described in the plaint) situated at Buria Gate, Jagadhari by way of specific performance of agreement to sell dated 20.05.2009 executed by the appellants-defendants in favour of the respondent-plaintiff.

The total sale consideration was stated to be ₹9,05,000/-. ₹4,80,000/- was

stated to have been paid by way of ten cheques and ₹20,000/- was stated to have been paid in cash. In essence, ₹5,00,000/- was stated to have been paid as earnest money. A suit with regard to the disputed building was stated to be pending in the Civil Suit in which a stay order had been passed. As per the agreement, the sale deed was to be executed after one month from the vacation of the stay order. It had also been agreed that the second floor of the disputed building which was in possession of defendant No.6-Sat Parkash, who was related to the appellants-defendants, was to be vacated on payment of ₹15,000/- to him out of the balance sale consideration of ₹4,05,000/-. However, the appellants-defendants did not give any information about the fate of the civil suit but got a notice dated 23.01.2012 served upon the respondent-plaintiff in which certain false and frivolous facts about the appellants-defendants having received ₹1,00,000/- as loan were stated. It was stated that the agreement to sell had been executed as a security. Certain other facts were pleaded. It was also alleged that the appellants-defendants in collusion with defendant No.6 got some compromise effected with a view to cause loss to the respondent-plaintiff. It was also averred that the respondent-plaintiff had been ready and willing to perform her part of the agreement. However, since the appellants-defendants did not execute the sale deed, the suit was filed.

3. The suit was resisted by the appellants-defendants. The execution of the agreement to sell was denied. Receipt of ₹5,00,000/- as earnest money was also denied. It was averred that they had sought financial aid of ₹1,00,000/- from the husband and son of the respondent-plaintiff for the marriage of appellant-defendant No.4. With a view to secure the loan amount, papers were got signed from the appellants-defendants and agreement to sell was executed. The value of the disputed building was more than ₹20,00,000/-

but since the agreement had been effected by way of a security, the total sale consideration was shown as ₹9,05,000/-. All other averments were also denied.

4. From the pleadings of the parties, following issues were framed:-

“1. Whether the plaintiff is entitled to the symbolic possession by way of specific performance of agreement dated 20.05.2009 in respect of the suit property? OPP.

1-A. Whether defendants No.1 to 5 returned the amount of ₹3,80,000/- to the plaintiff or her husband and her son as alleged? OPD.

1-B. Whether the agreement to sell dated 20.05.2009 has been executed by defendants No.1 to 5 as security as alleged? OPD.

2. Whether the plaintiff has always been ready and willing to perform her part of the contract? OPP.

3. Whether the suit is not maintainable? OPD.

4. Whether plaintiff has no locus standi to file the present suit? OPD.

5. Relief.”

5. Parties led their respective evidence.

6. The trial Court decreed the suit filed by the respondent-plaintiff.

A direction was issued to get the sale deed registered in favour of the respondent-plaintiff on receipt of the balance sale consideration. It was also held that since defendant No.6 was entitled to one-third share of the sale proceeds, a sum of ₹3,01,666/- was ordered to be paid to him and the remaining balance sale consideration was ordered to be paid to appellants-defendants No.1 to 5.

7. An appeal was preferred by the appellants-defendants, which was also dismissed by the First Appellate Court on 15.05.2023. It was held that the

agreement to sell had duly been executed. It was also held that the respondent-

plaintiff had always been ready and willing to perform her part of the agreement. The appeal was accordingly dismissed.

8. I have heard learned counsel for the appellants and have perused the record which was duly summoned.

9. Learned counsel for the appellants has strenuously urged that both the Courts erred in decreeing the suit filed by the respondent-plaintiff. Learned counsel read out the cross-examination of the witness of the respondent-plaintiff. Efforts were made to convince this Court that in fact it was a money transaction and the agreement to sell had been executed as a security. Learned counsel has submitted that the Courts below did not examine the matter from the correct perspective and erroneously decided the *lis* in favour of the respondent-plaintiff. Learned counsel has referred to the entire oral and documentary evidence led on the record of the case and has made efforts to convince this Court to interfere in the decisions of the Courts below.

10. I have considered the submissions made by learned counsel for the appellants but find the same to be devoid of merit.

11. Before advertng to the merits of the appeal, it would be essential to observe that that the requirement of framing of a substantial question of law in second appeal in terms of the provisions of Section 100 of the Code of Civil Procedure and as had been laid down in various pronouncements by the Hon'ble Apex Court including '*Hero Vinoth (minor) versus Seshammal*' **2006 (5) SCC 545**, was subsequently held to be not there by the Hon'ble Apex Court. It was held that in the States of Punjab and Haryana, it is the provisions of the Punjab Courts Act, 1918 which would be applicable and, therefore, Section 100 CPC would not hold the field and, accordingly, there

appeal. With regard to the States of Punjab and Haryana, it was so held in '*Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors.*' 2019 (3) R.C.R. (Civil) and '*Satyender and Ors. Versus Saroj and Ors.*' 2022 (12) Scale 92 respectively.

12. Reverting to the facts of the present case, the respondent-plaintiff not only stepped into the witness box herself as PW-3, she also examined the stamp vendor-Om Parkash as PW-2 from whom the stamp paper on which the agreement to sell dated 20.05.2009 was written had been purchased. Apart from this, she examined PW-4 Harcharan Singh, who was one of the attesting witnesses to the agreement to sell. PW-5 Shamsheer Singh, Advocate who had notarized the agreement to sell was also examined. Both the Courts, therefore, concurrently held that the execution of the agreement to sell stood duly proved. In fact, the execution of the agreement to sell was in a way admitted but a stand was taken that the same was more of a security document than an agreement to sell. This, the appellants-defendants were not able to prove. They did examine the second attesting witness of the agreement Luv Chadha as DW-3 but he spilled the beans in the cross-examination and stated that it were the appellants-defendants who had him that they had borrowed a sum of ₹1,00,000/- and that he had not read the contents of the document. There was no mention in the agreement about any loan of ₹1,00,000/-. Had it been a security document, there would have been some reference to the loan of ₹1,00,000/-. Both the Courts, therefore, rightly came to the conclusion that the agreement to sell had been duly executed. On readiness and willingness also, both Courts concurrently came to the conclusion that from the evidence led on the record of the case, it stood proved that the respondent-plaintiff had always been ready and willing or perform her part of the contract. The suit was filed

indicate that the respondent-plaintiff was ready and willing to perform her part of the agreement. The Courts below also rightly allowed the relief of specific performance because there was no circumstance to deny the same.

13. This Court, therefore, does not find any illegality in the concurrent findings recorded by both the Courts below warranting interference in second appeal.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

09.10.2023
Prince Chawla

(VIKRAM AGGARWAL)
JUDGE

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