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2023:PHHC:114802

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

RSA-3164-2017 (O&M)

Date of decision: 01.09.2023

USHA ARORA

.....APPELLANT

VERSUS

SUDESH JUNEJA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vikram Singh, Advocate with
Mr. Abhinav Sood, Advocate
for the appellant.

HARKESH MANUJA, J. (ORAL)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 14.02.2012 and 27.01.2017 passed by the Courts below; whereby suit for possession by way of specific performance of agreement to sell dated 18.03.2005 filed at the instance of appellant/ plaintiff has been dismissed.

2. Briefly stating, based on an agreement to sell dated 18.03.2005, the appellant/ plaintiff filed a suit for possession by way of specific performance qua the property in dispute being plot No. 382, Sector 8, Urban Estate, Karnal stating therein that the total sale consideration as settled between the parties was Rs.26.70 lacs with 05.06.2005 being the target date and a sum of Rs.3 lacs was paid as an earnest money. It was further pleaded that the last date for execution and registration of sale-deed was extended to 10.08.2005 with increase of sale consideration to Rs.27.20 lacs, however, despite the appellant/ plaintiff being ready and willing to perform her part of contract, the sale deed was not executed by respondent/defendant thereby compelling the appellant/ plaintiff to file the suit.

3. Upon notice, the respondent/ defendant though admitted the execution of the agreement, however, contested the suit while submitting that the appellant/ plaintiff was not ready and willing to perform her part of the contract as she was not having the balance sale consideration, therefore, as per the terms of agreement in question, the earnest money stood forfeited.

4. The trial Court vide its judgment and decree dated 14.02.2012 dismissed the suit filed at the instance of appellant/ plaintiff while holding that she failed to establish her readiness and willingness towards performance of the agreement to sell dated 18.03.2005. Aggrieved thereof, the appellant/ plaintiff filed first appeal which was partly allowed vide judgment and decree dated 27.01.2017, though the relief for possession by way of specific performance was denied, refund of earnest money with 6% interest thereupon was awarded.

5. Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for the appellant/ plaintiff submits that the readiness and willingness of the appellant/ plaintiff to perform her part of the agreement was duly proved on record. He further submits that though the respondent/ defendant raised a plea to the effect that the agreement in question was got executed at the instance of husband of the appellant/ plaintiff who allegedly happened to be a property dealer, for the purposes of gaining profit, however, the respondent/ defendant failed to establish his stand and thus suit should have been decreed in favour of appellant-plaintiff.

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

7. In the present case, from the pleadings and the material available on record, it can be seen that the agreement in question was executed on 18.03.2005

with Rs.26.70 lacs as the total sale consideration, besides Rs.3 lacs having been paid, as earnest money with 05.06.2005 being the target date, however, it is discernible that the target date was extended to 10.08.2005 and the sale consideration was enhanced to Rs. 27.20 lakhs. The enhancement of sale consideration for the extension of target date fortifies the stand of the respondent-defendant that the appellant-plaintiff was neither in a position to get the sale-deed executed in her favour nor she was able to find a suitable buyer in this regard. Even while appearing as PW1-the appellant-plaintiff did not depose that the extension was done on behalf of respondent-defendant.

8. Still further, despite the notice dated 30.12.2005 having been replied by the respondent/ defendant on 20.01.2006 thereby specifically disputing the readiness and willingness on the part of appellant/ plaintiff, the suit for possession by way of specific performance was filed by her after more than 2 years of the extended target date and that too without there being any documentary evidence brought on record so as to show the continuous financial capacity of the appellant/ plaintiff as regards her readiness and willingness to perform her part of the contract, particularly when she was admittedly having no independent source of income.

9. In the present case, the appellant/ plaintiff was required to establish on record the availability of balance sale consideration of more than Rs.23 lakhs, particularly in view of serious dispute having been raised in this regard by the respondent-defendant, however, no evidence in this regard was ever produced by the appellant/ plaintiff except for making a bald statement that the amount was withdrawn from the account of some relative without even producing the one or even disclosing the name of any person. Thereby rendering her dis-entitled for grant of decree for specific performance of agreement to sell dated 18.03.2005,

even the affidavit of presence before the Sub-Registrar on the date fixed i.e. 10.08.2005 was of the husband and not of the appellant-plaintiff.

10 In view of the discussion made hereinabove, thus finding no illegality or perversity in the judgments and decrees passed by the Courts below, this appeal is dismissed.

01.09.2023
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(HARKESH MANUJA)
JUDGE

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