

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

RSA-6291-2017(O&M)

Reserved on:-29.4.2023

Date of Pronouncement:-5.5.2023

Suresh Kumar

...Appellant

Versus

Kanta Rani

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

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

Mr.Saurabh Bajaj, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Kanta Rani had brought a suit against defendant Suresh Kumar seeking a decree of possession by way of specific performance of agreement to sell dated 13.12.2010; in addition to that craving for grant of permanent injunction.

2. As per the case of the plaintiff, the defendant had entered into an agreement with the plaintiff on 13.12.2010 for sale of his house bearing No.41, Sector 16, UE Karnal for a sum of Rs.32,25,500/- , receiving Rs.8 lakhs as earnest money, the final date for execution and registration of sale deed was fixed as 1.4.2011, however it was extended

to 5.4.2011, but the defendant did not come forward to execute the sale deed in favour of the plaintiff on the date fixed; though the plaintiff had gone to the office of Sub Registrar, Karnal and remained present there getting her presence marked; the plaintiff had served a legal notice upon the defendant calling upon him to come forward to execute the sale deed in terms of agreement to sell dated 13.12.2010 but to no effect. As such, the plaintiff had filed the suit in question.

3. On notice, the defendant appeared and filed a written statement contesting the suit raising various legal objections, on merits admitting having entered into agreement to sell with regard to house in suit with the plaintiff on 13.12.2010 and receiving Rs.8 lakhs as earnest money fixing the target date as 1.4.2011, which was extended to 5.4.2011. According to the defendant, the plaintiff did not reach office of Sub Registrar, Karnal on the target date, whereas he remained present there and got his presence marked by way of an affidavit. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

4. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

5. On the pleadings of the parties, following issues were framed:

1. Whether the agreement to sell in dispute dated 13.12.2010 was executed by the defendant out of his free Will and volition and after receiving the earnest money as alleged? OPP.
2. Whether the plaintiff was and is still ready and willing to perform

her part of agreement to sell in dispute? OPP.

3. If both the above issues are proved in affirmative, whether the plaintiff is entitled to the relief of specific performance of the agreement to sell in dispute? OPP.
4. Whether the plaintiff is also entitled to the relief of permanent injunction thereby restraining the defendant from alienating or otherwise encumbering the suit land? OPP.
5. Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit? OPD.
6. Whether the plaintiff is estopped from filing the present suit by her own act and conduct? OPD.

7. Relief.

6. The parties were afforded opportunities to lead evidence in support of their respective claims.

7. During the course of his evidence, the plaintiff, she examined Surender Kumar, Misc. Clerk, Tehsil Karnal as PW1, who deposed that the plaintiff had executed affidavit Ex.P1 on 5.4.2011. Plaintiff Kanta Rani appearing as PW2 vide her affidavit Ex.PW2/A repeated on oath her case as given in the plaint. PW3 Sh.Anil Kumar Sharma, Advocate deposed that he had served legal notice Ex.PW3/C to the defendant as per registered AD post. PW4 Vijay Dhull produced pension account of the plaintiff w.e.f. 1.1.2011 to 31.12.2013. PW5 Hardeep Singh, BSO, HDFC Bank testified that on 31.3.2011, an amount of Rs.4,90,000/- was withdrawn from the account of M/s Quiji Firm. He proved copy of statement of account as Ex.PW5/A. PW6 Ashok Kumar, Registry Clerk,

Tehsil Office, Karnal produced copy of sale deed NO.644/1 dated 26.4.2011 Mark PX executed by the plaintiff in favour of Madhubala and Shivani. PW7 Deepanshu, Clerk, HDFC Bank produced snap shot of signatures of Atul Pathria, Operator of the account of M/s Quinji Firm. PW8 Randhir Singh, Assistant Treasurer testified that on 31.3.2011, Kanta Rani had produced stamp papers for Rs.47,000/- and on 5.7.2011 Kanta Rani had requested to make refund of the stamp papers. PW9 Ravi Kumar, Probationary Officer, SBI, Grain Market Branch, Karnal produced statement of account of plaintiff Kanta Rani, copy Ex.PW9/A. PW10 EHC Dharambir Singh produced copy of application Ex.PW10/A submitted by the plaintiff at police station on 7.4.2011, photocopy of compromise being Ex.PW10/B and proceedings report Ex.PW10/C. PW11 Mohan Lal vide his affidavit Ex.PW11/A deposed about execution of Ex.P3. PW12 Sanjay Rana, PNB, G.T. Road, Karnal stated that on 31.3.2011, Kanta Rani had withdrawn Rs.3,50,000/- from her account. He proved statement of account of Kanta Rani as Ex.PW12/A. PW13 Om Parkash, Notary Public deposed that on 17.2.2011, he had attested an agreement to sell making an entry in his register at Serial No.2117, copy of which being Ex.PW13/A. Then after tendering certain documents counsel for the plaintiff had closed her evidence.

8. In rebuttal, defendant Suresh Kumar appeared as DW1 and vide his affidavit Ex.DW1/A, he deposed as per the stand taken by him in the written statement.

With that the evidence of the defendant stood closed.

9. After hearing the learned counsel for the parties, the trial

Court of Addl.Civil Judge (Sr.Divn.), Karnal gave issue-wise findings and vide judgment and decree dated 22.12.2014 suit of the plaintiff was decreed and plaintiff was held entitled to a decree of possession by way of specific performance of agreement to sell dated 13.12.2010 on payment of balance sale consideration to the defendant. The defendant was directed to execute the sale deed on receiving the balance sale consideration, whereas the plaintiff was directed to make payment of balance sale consideration within a period of 3 months and in case of her failure, the earnest money shall stand forfeited. It was further directed that if the defendant failed to execute the sale deed in favour of the plaintiff, the plaintiff would be at liberty to get the sale deed executed through process of law.

10. Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Karnal, which was assigned to Additional District Judge, Karnal, who vide judgment and decree dated 15.9.2017 dismissed the appeal upholding the judgment and decree passed by the trial Court.

11. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendant has filed the present regular second appeal before this Court.

12. Notice of the appeal was given to the respondent, who put in appearance through counsel.

13. I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

14. In this case the defendant admits having entered into

agreement to sell the house in question with the plaintiff on 13.12.2010 for a sum of Rs.32,25,500/- and receiving Rs.8 lakhs as earnest money. Now the question arises as to why the sale deed was not executed by the defendant in favour of the plaintiff. According to the plaintiff, she has been ready and willing to get the sale deed executed in her favour and had gone to office of Sub-Registrar, Karnal on 5.4.2011, the date fixed for execution of the sale deed for that purpose but the defendant did not come there, as such she got an affidavit attested and thereafter came back. Whereas according to the defendant the shoe is on the other leg since as a matter of fact, he had gone to the office of Sub-Registrar, Karnal on the stipulated date on 5.4.2011 and waited there but plaintiff failed to turn up. He executed an affidavit and then left that place.

15. The Courts below referring to facts and circumstances of the case and evidence brought on record by the contestants have given findings that plaintiff was and is still ready and willing to perform her part of contract and the transaction could not be completed on account of the defendant not coming forward to perform his part. No reason was found to be there to deny the relief of specific performance of agreement to sell to the plaintiff. Therefore, her suit for possession by way of specific performance of agreement to sell was decreed by the trial Court, which judgment and decree were affirmed by the First Appellate Court, in that way both the Courts below were on the same page. It is not disputed by the parties and it is borne out from the record also that the plaintiff had lodged a complaint regarding this very matter with the police against the defendant, where a compromise had taken place in terms of that the

defendant had agreed to refund Rs.10,50,000/- to the plaintiff by 18.4.2011 but defendant failed to pay that amount to the plaintiff.

16. Learned counsel appearing for the appellant/defendant has tried to build up an argument that once the matter had been compromised between the parties at police station in terms of which the plaintiff had agreed to receive the amount of earnest money paid by her to the defendant along with some interest/compensation, then a big gap comes in with regard to her willingness to get the sale deed executed and both the Courts below fell in error in holding that plaintiff has been and is still ready and willing to perform her part of the contract.

17. On the other hand, learned counsel appearing for the respondent/plaintiff has contended that though the matter had been compromised between the parties at police station but defendant did not stick to that compromise and paying Rs.10,50,000/- to the plaintiff by 18.4.2011, as such, the plaintiff had served legal notice Ex.PW3/C upon the defendant and then filed the suit against him on 28.5.2011. It cannot be said that there was any lack of readiness and willingness on the part of the plaintiff to get the sale deed executed.

18. After hearing the rival contentions, I find that the entire thing is to be seen in totality and in proper prospective. If the plaintiff had submitted complaint against the defendant at the police station for not coming forward to execute the sale in her favour after having entered into an agreement to sell with her on 13.12.2010 and receiving a substantial amount of Rs.8 lakhs as earnest money and the matter had been compromised there, though defendant had backed out of that compromise

also, that does not mean that plaintiff showed any inclination so as to not to get the sale deed executed in her favour and instead opted for return of money. Every normal person wants to avoid hassles of litigation. There was nothing abnormal in conduct of the plaintiff. Obviously she tried to buy peace seeking return of the earnest money paid by her to the defendant along with reasonable interest/compensation instead of getting locked in litigation with the defendant. It was one of the way out of a difficult situation in which the plaintiff found herself landed in. But that does not mean that she had given up option of getting the sale deed executed in her favour. The very fact that when the defendant failed to pay an amount of Rs.10,50,000/- to her by 18.4.2011 in terms of the agreement at police station, she got served a legal notice upon the defendant calling upon him to execute the sale deed in her favour. Thereafter, she filed a suit for specific performance affixing ad valorem fee thereon and pursued the matter properly showing that she has always been willing to perform her part of contract throughout.

19. With regard to her readiness i.e. financial capacity to pay the balance consideration amount , she has brought sufficient oral and documentary evidence on record in that respect and both the Courts below have found that she had financial capacity to pay the balance consideration amount. I do not see any reason to disagree with the Courts below on that point. No reason is there to deny the relief of specific performance to the plaintiff. On the other hand, the conduct of the defendant was such, which put him under suspicion.

20. With the concurrent findings having been recorded by the

Courts below against the appellants/defendants, which are based on proper appraisal of evidence and correct interpretation of law and there being no illegality or infirmity with the impugned judgments and decrees passed by the Courts below, there is no ground to interfere with such impugned judgments and decrees in regular second appeal.

21. No substantial question of law arises in this appeal.

22. Finding no merit in the appeal, the same stands dismissed.

The interim order dated 8.1.2018 passed by this Court staying the execution of the sale deed, thus comes to an end.

Since the main appeal is dismissed, the miscellaneous application(s), if any stands disposed of accordingly.

5.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No