

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-640-2021 (O&M)****Reserved on : 11.11.2024****Pronounced on : 19.11.2024**

Aasha Rani

....Appellant

VERSUS

Kamal & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Gourav Jain, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant against the judgements and decrees dated 19.08.2017 and 13.12.2019 passed by the Trial Court and the First Appellate Court dismissing her suit for possession by way of specific performance and for permanent injunction.

2. The suit was filed by the plaintiff-appellant averring that Sita Ram, father of defendant-respondent Nos.1 and 2 was owner in possession of the suit property and he through his GPA Sh. Chain Singh agreed to sell the same to the plaintiff-appellant for a sale consideration of Rs.5,000/- upon executing an agreement to sell dated 17.08.1992 after receiving the entire sale consideration of Rs.5,000/- in presence of witnesses and handing over possession of the suit property to the plaintiff-appellant. As per the plaintiff-appellant the date for execution and registration of the sale deed was not fixed. It was further averred that Sita Ram had expired on 27.06.1994 and

the plaintiff-appellant had requested his legal heirs i.e. defendant-respondent Nos.1 and 2 several times to execute the sale deed in her favour and had also got a legal notice dated 15.11.2013 issued to them to execute the sale deed in her favour on or before 05.12.2013. On 05.12.2013 the plaintiff-appellant remained present at the office of the Sub-Registrar, Tohana and waited for the defendant-respondents but they did not come present. It was further averred that the plaintiff-appellant has always been ready and is still ready and willing to perform her part of the contract. Hence, the present suit. The defendant-respondents did not put in appearance and were proceeded against ex-parte.

3. Vide judgement and decree dated 19.08.2017 the Trial Court dismissed the suit of the plaintiff-appellant. The appeal of the plaintiff-appellant was also dismissed by the First Appellate Court vide judgement and decree dated 13.12.2019. Hence, the present regular second appeal.

4. Learned counsel for the plaintiff-appellant has contended that both the Courts have erred in dismissing her suit. It is urged that the agreement to sell dated 17.08.1992 stood fully proved and therefore the suit for specific performance ought to have been decreed. It is also argued that since the defendant-respondents did not contest the suit the Courts should have decreed the same.

5. Heard counsel for the plaintiff-appellant.

6. In the present case the plaintiff-appellant has been unable to prove the due execution of the agreement to sell set-up by her. The Trial Court found that “ A perusal of the case file reveals that in this case plaintiff *has sought the specific performance of agreement to sell dated 17.8.1992.*

However, a perusal of the said agreement to sell dated 17.8.1992 reveals that it has not been prepared on any stamp papers whereas it has been prepared on a simple paper. It is worth mentioning here that plaintiff is the real daughter-in-law of the Chain Singh, alleged GPA of Sita Ram, the original owner. It is also worth mentioning here that Sita Ram had got expired way back in the year 1994 whereas the present suit has been filed by the plaintiff in the year 2014 i.e. after 20 years of death of original owner. In these circumstances, unless and until proved to the contrary it becomes very doubtful that the alleged agreement to sell was executed by Sh.Chain Singh in favour of plaintiff during the subsistence of the alleged GPA dated 13.3.1989. The possibility of the fact that Sita Ram may have got expired and thereafter, Chain Singh being aware of the fact that alleged GPA dated 13.3.1989 had become a worthless document, got executed the alleged agreement to sell dated 17.08.1992 in favour of his daughter-in-law on a simple paper so that the title of legal heirs of Sita Ram can be defeated in the suit property. Thus, the alleged agreement to sell dated 17.8.1992 cannot be relied upon” . The said findings recorded by the Trial Court were affirmed by the First Appellate Court. Both the Courts have also held that the suit was barred by limitation. Learned counsel for the plaintiff-appellant has been unable to point towards any cogent and reliable evidence on the record to dislodge the said conclusions. Merely because the defendant-respondents did not appear before the Courts would not ipso facto mean that the suit of the plaintiff-appellant deserved to be decreed. The mere failure or neglect of a defendant to file a written statement controverting the pleaded facts in the plaint does not entitle the plaintiff to a judgment in his favour unless by

adducing evidence he proves his case/claim. The weak evidence led by the plaintiff-appellant in the present case does not warrant decreeing her suit. No other point was argued.

7. In view of the above, no mistake or error of law or facts can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

19.11.2024
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No