



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

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**RSA-3470-2019 (O&M)
Reserved on : 10.12.2024
Pronounced on : 17.12.2024**

SMT. MEENA

....Appellant

VERSUS

**SH. BHANWAR SINGH (SINCE DECEASED)
THR HIS LRS & ORS**

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Abhimanyu Singh, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant aggrieved by the judgments and decrees dated 23.03.2016 and 16.02.2019 passed by the Trial Court and the First Appellate Court, respectively, dismissing her suit for specific performance and permanent injunction.
2. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed the present suit claiming that the defendant-respondents No.1 and 2 being owners in possession of land comprised in Khewat No.1844/1789, Khatoni No.2248, Rect. No.172, Killa No.16/2 (5-3) to an extent of 10/103th share i.e. 0 Kanal 13 Marla measuring 300 square yards situated within the revenue estate of Bhiwani Lohar, Tehsil and District Bhiwani, agreed to sell the suit property to the plaintiff-appellant for a sum of ₹1,45,450. It was averred that ₹50,000 was paid as earnest money on

11.11.2005. The target date was fixed as 11.02.2006. A further sum of ₹20,000 was paid on 14.11.2005; ₹30,000 on 28.11.2005 and ₹30,000 more was alleged to have been paid on 20.12.2008. In this manner, a total sum of ₹1,30,000 was paid and only a sum of ₹15,450 remained. It was further the case set up that the defendant-respondents No.1 and 2 gave a general power of attorney in favour of defendant-respondent No.3 who entered into an agreement to sell with the plaintiff-appellant on 23.07.2009 to sell the very same land and admitted in the agreement to sell that the entire amount of the sale consideration had been received. It was also stated in the agreement that possession of the suit property had been given and that pursuant to taking possession, the plaintiff-appellant had constructed a house on the suit property. It was further the case that though no date was fixed for registration of the sale deed, however, defendant-respondent No.3 had agreed to register the sale deed as and when requested by the plaintiff-appellant.

3. On notice defendant-respondents No.1 and 2 appeared before the Court and filed their joint written statement raising various preliminary objections qua maintainability, lack of cause of action, etc. On merits it was pleaded that the plaintiff-appellant failed to get the sale deed executed on 11.02.2006 in pursuance of the agreement to sell dated 11.11.2005 as she had not paid the entire sale consideration for the land. It was further clarified that on 31.07.2009 a legal notice was sent to the plaintiff-appellant regarding non-payment of the entire sale consideration in respect of the agreement to sell dated 11.11.2005. It was further the case set up that the general power of

attorney in favour of defendant-respondent No.3 had been cancelled by defendant-respondent No.3 himself on 05.05.2007 and that a suit had also been filed challenging any instrument having been executed on the basis of the general power of attorney. Defendant-respondent No.3 failed to put in appearance despite service. Replication was filed by the plaintiff-appellant denying the averments made in the written statement filed by defendant-respondents No.1 and 2 and reiterating those of the plaint.

4. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to the alleged decree for specific performance and permanent injunction ? OPP
2. Whether the present suit is not maintainable in the present form ? OPD
3. Whether the plaintiff has no cause of action or *locus standi* to file the present suit ? OPP
4. Whether the plaintiff has not approached the Court with clean hands and suppressed true and material facts ? OPD
5. Whether the present suit is bad for mis-joinder and non-joinder of necessary parties ? OPD
6. Whether the plaintiff has not paid proper Court fee in the present case ? OPD

7. Whether the plaintiff has filed the present suit just to harass and humiliate the defendants ? OPD
8. Whether the plaintiff has been stopped from filing the present suit by her own act, conduct etc. ? OPD
9. Relief.

5. The Trial Court vide judgment and decree dated 23.03.2016 dismissed the suit. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 16.02.2019. Hence, the present regular second appeal by the plaintiff-appellant.

6. The learned counsel for the plaintiff-appellant would contend that the entire amount stood paid by the plaintiff-appellant as was noted in the agreement to sell dated 23.07.2009. It is further the contention that after taking possession, pursuant to the agreement to sell dated 23.07.2009, the plaintiff-appellant had carried out construction and she had invested a huge amount. The learned counsel would further urge that the plaintiff-appellant was always ready and willing to perform her part of the contract and that both the Courts erred in dismissing the suit.

7. Heard.

8. In the present case both the Courts concurrently found that though the agreement to sell dated 11.11.2005 was admitted, however, no sale deed was executed pursuant to the said agreement to sell dated 11.11.2005. It is not the case of the plaintiff-appellant that she ever appeared before the Sub-Registrar for execution of the sale deed on 11.02.2006.

Rather, it is the case set up by the plaintiff-appellant that even after the expiry of the target date on 11.02.2006 another amount of ₹30,000 was paid by her on 20.12.2008. Both the Courts concurrently found that the endorsements qua the payments were not proved. Admittedly it is not the pleaded case of the plaintiff-appellant that she was ever ready and willing to perform her part of the contract as far as agreement to sell dated 11.11.2005 was concerned. The suit having been filed in the year 2010 i.e. after a period of four years from the date of the target date in respect of the agreement to sell dated 11.11.2005 (Ex.P-1), was held to be time barred. The learned counsel for the plaintiff-appellant has not been able to convince this Court that the agreement to sell dated 11.11.2005 could be specifically enforced. Regarding the second agreement to sell dated 23.07.2009 the learned counsel for the plaintiff-appellant has been unable to convince this Court that the concurrent findings returned by both the Courts that the alleged general power of attorney holder - defendant-respondent No.3 - had the right to enter into the agreement dated 23.07.2009. The original of the general power of attorney dated 08.11.2005 was produced by defendant-respondents No.1 and 2 themselves. Had it been the case where the agreement to sell had actually been entered into on the basis of the general power of attorney by defendant-respondent No.3, the original of the same would have been at least with the plaintiff-appellant. Further still, once the payments itself were not proved, the question of specific performance of the agreement to sell dated 23.07.2009 would not arise.

9. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

17.12.2024
Aman Jain

(ALKA SARIN)
JUDGE

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