



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

**RSA-928-2023 (O&M)
Date of Decision:27.08.2024**

Parveen Rani

....Appellant

Versus

Deepak Kanda & Others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Mr. Sunny K. Singla, Advocate
for the appellant.

Mr. Sarju Puri, Advocate for
caveator/respondent No.7.

RITU TAGORE, J. (Oral)

1. Being aggrieved by the concurrent findings returned against him, appellant-plaintiff has preferred this Regular Second Appeal against the impugned judgment dated 18.10.2022, passed by learned Additional District Judge, Kapurthala affirming and upholding the judgment dated 15.12.2015 passed by learned Civil Judge (Junior Division), Phagwara, whereby suit of the appellant for specific performance of agreement to sell, declaration, permanent injunction and recovery has been dismissed.

2. For easy reference, the parties to the *lis*, hereinafter shall be referred to by their original status in the suit.

3. For proper adjudication of the matter, it is desirable to go through the facts of the case.

4. Plaintiff, Parveen Rani, instituted a suit for specific



performance and declaration against the defendants, claiming that defendants No.4 and 5, the owners of the suit property through their attorney defendants No.1 to 3, entered into an agreement dated 31.05.2008 to sell the suit property i.e. a house, as detailed in head note of the plaint, for a total sale consideration of ₹27 lacs and received ₹14 lacs towards earnest money on different dates and endorsed the same at the back of an agreement to sell, and was put in possession of the house. Since then she is in the lawful possession of the house in dispute. It was maintained that target date for execution of sale deed was initially fixed on/before 01.09.2008, thereafter it was fixed for 06.10.2008. The plaintiff claimed that she was always ready and willing to perform her part of the agreement and also remained present in the office of Registrar on 06.10.2008 with ready money for execution of sale deed, but defendants did not turn up for execution of the sale deed and refused to execute the sale deed. Instead, defendants executed sale deed dated 29.09.2008 in favour of defendants no.6 and 7 in breach of terms of the agreement to sell; stating same is not binding upon her rights and prayed to declared it as null and void. The plaintiff, also pleaded that defendants No.6 to 7, filed a suit for possession against her husband and are bent upon to interfere in her lawful possession over the suit property. She also filed a criminal complaint against defendants. Despite repeated requests, defendants refused to admit her claim over the suit property, compelling her to file the suit.

5. Upon put to notice by the learned Trial Court, defendants No.1, 2, 6 and 7 appeared and filed the joint written statement, challenging the maintainability of the suit and lack of cause of action in favour of plaintiff to file the suit against them. Defendants No.6 to 7, pleaded them to be *bona-*



fide purchasers of the suit property for consideration and without notice of alleged agreement to sell. On merits, defendants denied the averments of the plaintiff regarding agreement dated 31.05.2008 and taking possession of the suit property. Defendants No.6 to 7 admitted to having filed a suit for possession of the suit property against husband of the plaintiff. With these assertions prayed for dismissal of the suit. The plaintiff filed rejoinder and reiterated her stand and denied the averments of the defendants. Since parties were at variance, the learned Trial Court, framed the following issues:-

- “1. Whether the plaintiff is entitled for specific performance of the agreement to sell dated 31.05.2008? OPP
2. Whether the plaintiff is ready and willing to perform her part of the contract? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has no cause of action and locus-standi to file the present suit? OPD
5. Whether the plaintiff has not come to the Court with clean hands? OPD
6. Whether the defendants No.6 and 7 are *bona-fide* purchasers with consideration and without notice of any alleged agreement to sell? OPD
7. Relief.”

6. In order to prove her case, plaintiff appeared as PW-1 and deposed as per her plaint. In support of her version, plaintiff examined Sunil Kumar PW-2, a Stamp Vendor, who stated that he sold stamp papers to Deepak Kanda on 31.05.2008. PW-3 HC Ashok Kumar brought the record of complaint No.857 dated 30.06.2009 made by plaintiff, Parveen. PW-4



Mohit , deposed that he made statement in complaint case titled as ‘Parveen Rani Vs. Deepak Kanda & Others’. Rajinder Kumar, PW-5 (wrongly mentioned as PW-4) stated that he completed inquiry in the complaint made by Parveen Rani and recorded statements of parties including Mohit (PW-3). PW-6 Paramjit Singh, Record Keeper (wrongly mentioned as PW-5), brought the record pertaining to complaint No.640 dated 14.08.2009 made by Parveen Rani. Asha Rani, PW-7 (wrongly mentioned as PW-6), deposed that she had appeared as a witness in complaint case titled as ‘Parveen Rani Vs. Deepak Kanda’. PW-7 Parveen Kumar is a witness to agreement to sell, but he did not support the document Ex.PW1/3, neither he supported the fact of making joint statement with Asha Rani on 29.06.2010 before sub-Registrar. He denied having attested the agreement to sell.

7. On the other hand, defendant No.1 Deepak Kanda stepped into witness box as DW-1 and Chamkaur Lal defendant No.7, as DW-2, both stated as per their version.

8. Learned Trial Court on appraisal of evidence found the testimonial account of plaintiff unworthy of reliance due to inherent infirmities in her version on material facts touching the execution of agreement to sell dated 31.05.2008 as well as the identity of defendants against whom she sought enforceability of the agreement to sell. Further, learned Trial Court also observed failure on the part of the plaintiff to place on record, the original agreement to sell, the prime document, on which she based her suit. Accordingly, learned Trial Court answered issues No.1, 2, 5 and 6 against the plaintiff and dismissed the suit.

9. The first appeal filed by the plaintiff was also dismissed by the learned Appellate Court, affirming the findings of the learned Trial Court.



10. Learned counsel for the plaintiff-appellant submits that learned Courts below failed to appreciate the evidence in correct perspective, whereas plaintiff duly proved execution of agreement to sell dated 31.05.2008 by deposing that defendants No.1 to 3, the attorneys of defendants No.4 to 5, the owners of the suit property, executed agreement to sell dated 31.05.2008 and received ₹14 lacs earnest money out of ₹27 lacs, towards sale consideration and put her in possession of the suit property and since then she and her husband are in possession of the suit property. It is stated that filing of the suit for possession against the husband of the appellant Harminder Pal regarding the suit property serves as testimony to the execution of agreement to sell with the plaintiff. It is stated that plaintiff also proved the filing of the criminal complaint against defendants, when she became aware of the sale of the suit property in favor of defendants 6 and 7 by defendants No.1 to 5, which was in breach of the terms of agreement to sell. Learned Counsel submits that learned Courts below erred in holding defendants no 6 and 7 as *bona-fide* purchasers, contrary to the evidence on record.

11. Learned counsel further submits that the original agreement to sell Ex.PW1/3 was placed on record, but the Courts below wrongly held it to be a colored copy based on surmises and conjectures, thereby materially prejudicing the plaintiff. Learned counsel contends that no objection was raised by the defendants when agreement to sell was tendered in evidence, and should not now be permitted to challenge its admissibility. The learned counsel submits that plaintiff duly deposed on all the facts relating to execution of agreement to sell, payment of earnest money of ₹14 lacs on different dates and her willingness and readiness to complete the execution



of agreement to sell. However, learned Courts below erred in selectively relying upon the plaintiff's statement, contrary to the settled position of law which mandates that entire version of a witness needs to be considered in the context of pleadings and other evidence on record. Learned counsel submits that Courts below materially erred in appreciating the evidence, raising substantial question of law resulting in miscarriage of justice. A prayer is made to allow the appeal.

12. On the contrary, learned counsel for the caveator/defendant No.7 supported the findings of the learned Courts, stating they are based on sound appreciation of the evidence. Learned counsel submits that, in the joint written statement of the defendants No.1, 2, 6 and 7, specific objection was raised, asserting that agreement to sell was forged and no such agreement was ever executed between the plaintiff and defendants No.1 to 5 and suit was unmaintainable without filing the original agreement. Learned counsel submits that plaintiff in the rejoinder claimed filing of original agreement to sell in the complaint case titled as 'Parveen Rani vs. Deepak Kanda etc', however, presented no evidence to indicate that original was produced before the Court or the agreement Ex.PW1/3 was compared with the original. In the light of evidence, it is submitted, learned Courts correctly discarded the agreement to sell Ex PW1/3. Additionally, it is stated that plaintiff failed to substantiate the material facts touching the execution of agreement to sell, payment of purchase money, the identity of the party with whom agreement to sell was executed. The Courts made a detailed discussion on the testimonial account of the plaintiff, identifying significant inconsistencies in her account, concluding that she failed to prove her essential claim regarding the execution of agreement to sell (EX.PW1/3).



The other witnesses PW-2 Sunil Kumar, Stamp Vendor, PW-4 Mohit son of attesting witness, similarly also failed to support her version.

13. Learned counsel submits that defendants No.6 and 7 are *bona-fide* purchasers of the suit property for consideration and without notice of of agreement to sell, as pleaded by the plaintiff. It is stated that there was no encumbrance/bar on the suit property when defendants purchased it. Learned counsel submits that after the execution of sale deed dated 26.09.2008, the defendants No.6 to 7 entered into an agreement to sell with husband of the plaintiff on 11.10.2008. However, this agreement was later cancelled, and the husband of the plaintiff promised to deliver the possession back to defendants No.6 and 7, and when plaintiff refused to deliver the possession, they filed suit for possession of the suit property, which was decreed in their favor. First appeal and Regular Second Appeal, filed by the husband of the plaintiff were dismissed, as were the objections filed by the plaintiff before executing Court, and warrants of possession has been issued for implementation of the decree.

14. Learned counsel submits that the Police did not find commission of a cognizable offence in the complaint filed by the plaintiff against the defendant and relegated her to seek remedy from Civil Court. Learned counsel submits that there is no merit in appeal and prays for its dismissal.

15. I have considered the submissions of the learned counsel for the parties and have gone through the record, with their valuable assistance and finds no ground to interfere in the judicious findings recorded by the learned courts below.

16. Law is well settled that plaintiff has to stand on his own legs, he



cannot derive any benefit from the weakness or no case of the defendant. Further, plaintiff is required to bring cogent, admissible and a reliable evidence to earn the relief as prayed for.

17. Let the evidence of the plaintiff be examined in the light of above settled position of law, in order to know if plaintiff has been able to substantiate her case.

18. To prove the due execution of agreement to sell Ex.PW1/3, the plaintiff testified as PW-1 in accordance with the plaint. However, during cross-examination, she made certain material admissions that undermined her version of the agreement's execution. These admissions instead supported the claim of the defendants, who denied the execution of agreement to sell Ex.PW1/3 and characterized it as a forged document. Firstly, she indicated ignorance about the defendants namely Deepak Kanda, Anil Gupta, Pawan and defendant No.7 Chankaur Lal. Secondly, she was unable to specify from where the agreement to sell Ex.PW1/3 was typed, or whether it was notarized or not, or if it was an original document or a photocopy. Additionally, she could not provide details of the suit property, such as its Khasra number etc. Her response regarding the source of the funds for purchasing the house and payment made under the agreement to sell were inconsistent. Further, she also tried to conceal that her husband had entered into an agreement with defendant regarding the suit property, which was later cancelled leading to the defendants No. 6 and 7 filing a suit for possession against her husband after his refusal to relinquish the property and hand over its possession. The Courts noted these material deficiencies in testimonial account of the plaintiff, as she failed to prove the due execution of agreement to sell Ex.PW1/3 dated 31.05.2008 and disbelieved her



version. To the considered opinion of this Court, the Court below correctly discarded her evidence due to its inconsistencies and lack of credibility.

19. Further, plaintiff's statement remained unsupported from any other evidence, proving execution of agreement to sell Ex.PW3/A. Although ,Suil Kumar (PW-2), the stamp vendor, testified that stamp paper was purchased from him, but during cross-examination, admitted that entry No. 2155 of purchase bear signature of Ajit and lacked the signature of Deepak Kanda, defendant. Additionally, he acknowledged that he was unfamiliar with the parties involved. These admissions failed to establish that stamp paper was purchased by Deepak Kanda. Mohit (PW-4) is son of Phola Rani, stated that agreement Ex.PW1/3 did not bear his mother's signatures. His statement also failed to help the plaintiff in proving execution of the agreement to sell. Similarly, Asha Rani (PW-6) did not support version of the plaintiff. She denied her acquaintance with defendant Deepak Kanda. Likewise, Pawan Kumar (PW-7), did not support the version of the plaintiff. He denied, having appeared before Sub-Registrar on 29.06.2010, attesting the agreement to sell Ex.PW1/3 or witnessing its execution. Collectively, this evidence, did not substantiate the plaintiff's claim regarding the execution of agreement to sell Ex.PW1/3. The learned Courts below thus rightly ruled against the plaintiff.

20. Furthermore, plaintiff failed to establish that agreement to sell Ex. PW1/3 produced in the learned Court was original document and was not a photocopy. The defendant in their written statement and on oath categorically stated that agreement to sell Ex. PW1/3 is a fabricated document. It was never executed, the defendants also took an objection regarding non-production of original documents in the learned Court. In



rejoinder, the petitioner pleaded original was tendered in criminal complaint. However, the plaintiff presented no evidence to establish that original agreement was obtained by plaintiff from the criminal Court according to the procedure. The plaintiff also did not examine any witness to prove, compare and verify that the agreement Ex. PW1/3 was a correct copy of the original. Instead, the plaintiff specifically stated that agreement to sell Ex. PW1/3 is being tendered in the Court is the original document. As noted, no evidence has been presented on record to prove that plaintiff obtained the original agreement from the criminal Court and then tendered in this case.

21. The contention of the counsel for the plaintiff that since no objection was taken by the defendants at time of admission of agreement to sell Ex PW1/3 in evidence, therefore, defendants are not permitted to challenge the same and can be duly read in the evidence. The contention is devoid of merit, as it is an established principle of law that mere tendering of a document in evidence, does not dispense with its due proof. Admissibility of a document and its evidentiary value are two distinct aspects. The evidentiary value of a document is contingent upon its due proof. In the present case, the plaintiff failed to establish the due execution of the agreement to sell by leading any reliable evidence. Consequently, same cannot be read into the evidence. The Courts have correctly rejected the evidence of the plaintiff. The statements of PW-3 Ashok Kumar and PW-5 Inspector Rajinder Kumar, failed to demonstrate that police took any legal action against the defendants based on the plaintiff's complaint. Furthermore, from the statement of plaintiff, her alleged willingness and readiness is also not made out. PW-7 denied that he and plaintiff ever appeared before Registrar, and plaintiff also could not account for the source



of money, she claimed to have paid to the defendants No.1 to 5, for the purchase of the house in dispute. Given the plaintiff's failure to prove due execution of agreement to sell and payment of earnest money, the learned Courts below were justified in declining the relief of refund of earnest money.

22. In contrast, the defendants proved that they are *bona-fide* purchaser of suit property for valuable consideration without notice. The vendors defendants No.1 to 5 have admitted the sale of the suit property in favour of the defendants No.6 to 7 and proved the sale deed Ex.D1. The counsel for the defendants stated that suit for possession filed by defendant No.7 against husband of the plaintiff, has been decreed, with subsequent appeals filed by him before the First appellate Court and regular second appeal, have been dismissed. Even the objections filed by plaintiff in execution proceedings have also been dismissed. Learned counsel for the plaintiff failed to refute the aforesaid factual position.

23. In view of the aforesaid discussion, it is held that learned Courts below rightly appreciated the evidence, and correctly resolved the material issues against the plaintiff and in favour of the defendants. All these factors taken together, makes no ground to form a different opinion to bring the findings of the learned Courts below within the realm of perversity.

24. For the reasons recorded above, I do not find any illegality or perversity, in the concurrent findings, which are based on sound application of oral and documentary evidence. No ground for interference is made out much less involvement of any substantial question of law.

25. No other point urged.



26. Resultantly, there is no merit in the appeal and is, hereby, dismissed.

27. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

(RITU TAGORE)
JUDGE

27.08.2024
lucky/Gaurav Sorot

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No