

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****108****RSA-2284-2022 (O&M)****Date of decision: 24.02.2025****Manohar Lal****...Appellant(s)****Vs.****Rani Devi****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Dheeraj Mahajan, Advocate for the appellant.

NIDHI GUPTA, J.**CM-7916-C-2022**

Prayer in this application filed under Section 151 CPC is for condonation of delay of 06 days in refiling the accompanying appeal.

Heard.

For the reasons mentioned in the application which is supported by an affidavit of the applicant/appellant, the same is allowed and delay of 06 days in filing the accompanying appeal is condoned.

RSA-2284-2022 (O&M)

The defendant is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the respondent/plaintiff for possession, or in alternative, suit for recovery of Rs.4,50,000/- with interest @ 12% per annum, has been decreed by both the Courts below.



2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'defendant'; and the respondent is the 'plaintiff'.

3. The brief facts of the case as stated in the plaint are that the defendant is the owner of the suit house as described in the plaint. The defendant agreed to sell the same to the plaintiff, vide Agreement to Sell dated 06.07.2015 for a consideration of Rs. 4.50 lacs. The entire sale consideration was paid by plaintiff at the time of execution of said Agreement. It was stipulated in the Agreement that plaintiff can get the sale deed executed as and when she desires and that expenses of registration and stamp shall be borne by plaintiff. It was further stipulated that Agreement can be enforced through Court; and if defendant fails to execute sale deed, he shall be liable to pay the double amount i.e. Rs. 9 lacs to the plaintiff. The possession of suit property was delivered to plaintiff at the time of execution of Agreement; but after execution of Agreement, the defendant requested the plaintiff to allow him to use the suit property on the pretext that he needed time to arrange for some other residence for himself and his family. Both the parties were neighbours and well known to each other so plaintiff agreed and vide writing dated 06.07.2015 itself, allowed the defendant to use the suit property till 10.07.2016. The plaintiff has been ready and willing and is still ready and willing to perform her part of agreement. After 10.07.2016, the plaintiff has been requesting the defendant to execute sale deed and deliver possession of suit property but the defendant has been putting off the matter on one pretext or the other.



A legal notice dated 18.07.2016 was issued calling upon the defendant to execute the sale deed on 1.8.2016, in terms of Agreement dated 06.07.2015 but despite notice, the defendant did not turn up on 01.08.2016. The plaintiff remained present at office of Sub-Registrar, Gurdaspur along with expenses of stamp, registration and sundry expenses and got her presence marked but defendant did not turn up and finally refused to execute sale deed. Hence the present suit.

4. Upon notice, appellant/defendant appeared and filed written statement resisting the suit on various grounds stating that husband of plaintiff namely Balbir Dass had purchased three shops from mother of defendant namely Maya Devi wife of Sewa Ram and has only paid Rs. 1,20,000/- for three shops. The defendant received balance amount from husband of plaintiff. Signature of defendant on some documents had been taken as defendant was mentally upset due to chronic ailment of his wife Sudesh Kumari. Huge amount has been spent on treatment and last rites of wife of defendant. Now the defendant is mentally upset. No agreement for sale of house and one shop has been executed by defendant in favour of plaintiff. Denying rest of the averments, dismissal of suit was prayed for.

5. No replication was filed by the plaintiff.

6. On the basis of the pleadings of the parties, following issues were framed vide order dated 14.09.2017: -

i. Whether the plaintiff is entitled for possession as prayed for?

OPP

ii. Whether the suit of the plaintiff is not maintainable?

OPD



iii. Whether plaintiff has concealed the material facts from the court is so, its effect? OPD

iv. Whether the plaintiff has not come to court with clean hand? OPD

v. Relief.

7. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided all the issues in favour of the plaintiff and against the defendant. Accordingly, vide judgment and decree dated 23.09.2019, the learned Civil Judge(Junior division), Gurdaspur decreed the suit of the plaintiff with costs holding her entitled to possession by way of specific performance of Agreement to Sell dated 06.07.2015. The defendant was further directed to execute the sale deed in favour of the plaintiff and deliver possession within a period of two months from the date of the judgment failing which the plaintiff can get the same executed by process of Court. The appeal filed by the defendant against the said judgment and decree dated 23.09.2019 was dismissed by the Id. District Judge, Gurdaspur vide judgment and decree dated 01.11.2021. Hence, present second appeal.

8. Ld. counsel for the appellant/defendant assails the judgments and decrees of the Id. Courts below by submitting that the learned Courts below have failed to appreciate that the Agreement in question was never executed. The defendant had merely received the balance payment qua three other shops which were bought by the plaintiff; and that the signature of the defendant was taken on blank papers by the plaintiff which was later converted to present Agreement to Sell. It is submitted that it was



proved on record by the defendant that he has only residential house/suit property, and no other property. As such, the defendant had never agreed to sell his residential house in favour of the plaintiff for such a meagre amount. No doubt, the defendant was going through difficult time as his wife was suffering from Cancer and for this reason, the defendant was under mental depression and was short of funds. However, the plea of hardship raised by the defendant has not been discussed by the learned Courts below.

9. It is contended that in the Agreement to Sell dated 06.07.2015, no target date for execution of sale deed was fixed. This clearly casts shadow of doubt on the execution of any such Agreement. Moreover, vide separate writing of even dated 06.07.2015, the defendant was allowed to reside in his own residential house upto 10.07.2016. It is submitted that if any such Agreement to Sell was executed between the parties, there was no question for permitting the defendant to reside in his own residential house. However, these material aspects have been ignored by the learned Courts below while recording the impugned findings. It is submitted that once the plaintiff claims that possession has been delivered to her in pursuance of alleged Agreement to Sell, Agreement was mandatorily required to be registered in view of the provisions of Registration Act. It is contended that non-registration of the Agreement itself goes to show that no such Agreement was ever executed. It is accordingly prayed that the present appeal be allowed; and impugned judgments and decrees be set aside.



10. No other argument is raised on behalf of the defendant.

11. I have heard learned counsel for the appellant/defendant and perused the case file in great detail.

12. Learned counsel for the defendant has raised three-fold contentions before this Court to the effect that Agreement to Sell dated 06.07.2015 (Ex.P1) in respect of the suit house was never executed by the defendant; no target date was fixed for execution of sale deed; and that it was the sole residential house of the defendant and, therefore, there was no question of selling the same.

13. I find no merit in the submissions made by the appellant/defendant. The evidence on record clearly establishes that the defendant had executed the disputed Agreement to Sell dated 06.07.2015 (Ex.P1) in respect of the house measuring 3 Marlas/suit property for total sale consideration of Rs.4,50,000/-. The said Agreement stands duly proven from the evidence of attesting witness PW2 Santokh Rai, and Scribe PW1 Tarsem Masih. Both the above said witnesses confirm that Agreement was executed at the instance of the defendant. Even the plaintiff as PW3 had confirmed the execution of Agreement. Although defendant (DW/1) had denied executing the Agreement, however, he had failed to explain his signature in the register of the Scribe (Ex.Px). In fact during his cross-examination, the defendant had admitted executing the Agreement and even receiving the full sale consideration. The defendant has further admitted that initially possession was delivered to the plaintiff. The objection of the defendant in respect of some other shops purchased by



the plaintiff from Maya Devi was rightly rejected being not material to the present case; and therefore, it was held that there was no concealment of facts on the part of the plaintiff. The defendant had further admitted that entire sale consideration of Rs.4,50,000/- was fully paid by the plaintiff to the defendant at the time of Agreement to Sell. Even readiness and willingness of the plaintiff to perform the contract was admitted by the defendant. In view of the above evidence, the Agreement in question stood duly proven on record.

14. The defendant has misled that no target date was set as per the said Agreement (Ex.P1). Admittedly, the said Agreement stipulated that the plaintiff can get the sale deed executed at any time as per her desire. Further, the said Agreement to Sell contains a Legal Enforcement and Penalty Clause stipulating that if the defendant failed to execute the sale deed, he would be liable to pay the double amount i.e. Rs.9 lacs to the plaintiff. The Agreement further specifies that expenses for registration and stamp duty would be borne by the plaintiff. The possession of the suit property was handed over to the plaintiff at the time of execution of Agreement to Sell itself. However, keeping in view the strained circumstances of the defendant, the plaintiff had acceded to the request of the defendant for temporary use of the suit property after the execution of the Agreement, as it was stated by the defendant that he needed some time to arrange alternative premises as residence for himself. As both the parties were neighbours and well acquainted, the plaintiff had agreed and through a separate writing document dated 06.07.2015 had permitted the



defendant to use the property till 10.07.2016. However, the defendant failed to vacate the said premises. Thereafter, the plaintiff had issued legal notice dated 18.07.2016 demanding execution of sale deed on 01.08.2016. Despite the notice, the defendant did not appear to execute the sale deed on 01.08.2016 although the plaintiff remained in the office of Sub-Registrar along with all expenses.

15. The learned Courts below also found numerous contradictions in the case put up by the defendant to the effect that in his written statement the defendant had claimed that his mother Maya Devi had sold three shops to the plaintiff; whereas in his cross-examination, he stated that only one shop was sold and expressed ignorance about the sale made by his mother.

16. Learned counsel for the appellant is unable to explain, dispute, or controvert the above said facts and findings .

17. Accordingly, the present regular second appeal is hereby **dismissed.**

18. Pending applications, if any, stand disposed of.

24.02.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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