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

RSA-2150-2023 (O&M)
Date of decision : 13.02.2025

SHEELA DEVI

....Appellant

Versus

JITENDER AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

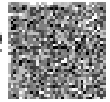
Present : Mr. Ketan Antil, Advocate and
Mr. Pawan Singh, Advocate
for the petitioner.

Mr. Vikram Singh Punia, Advocate with
Mr. Amit Siwach, Advocate
Mr. Yashasvi Rana, Advocate
for respondent No.1.

PANKAJ JAIN, J. (ORAL)

Instant second appeal is directed against judgment and decreed passed by Additional District Judge, Sonapat dated 26.04.2023 whereby judgment and decree passed by Civil Judge (Senior Division) Sonapat was reversed w.r.t. relief and the plaintiff was granted main relief of specific performance.

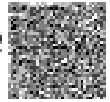
2. Plaintiff i.e. respondent No.1 filed suit seeking specific performance of agreement to sell dated 26.11.2008 whereby Anup Singh son of Bhima agreed to sell suit property admeasuring 8 Kanals in favour of the plaintiff. As per the case of the plaintiff, the total sale consideration



agreed was Rs.9,00,000/-. Out of which, Rs.3,00,000/- was paid as earnest money. The parties agreed to get the sale deed executed on or before 15.06.2009. As per plaintiff, he remained present in the O/o Sub Registrar on the target date i.e. 15.06.2009 along with the remaining sale consideration and registration expenses. Anup Singh failed to turn up. Plaintiff got his affidavit regarding presence attested by the Sub Registrar. Plaintiff claims to have served legal notice dated 19.08.2009 upon the defendant asking him to come present before the Sub Registrar to perform his part of the agreement on or before 04.09.2009. Having received no response, he instituted suit on 30.09.2009. Service upon defendant could not be effected through ordinary process. An application was moved by brothers of Anup Singh seeking impleadment as party claiming that Anup Singh was missing. Application was allowed. His brothers namely Ranbir Singh and Jeet Singh were allowed to represent the estate of Anup Singh. The suit was contested by brothers of Anup Singh. Execution of agreement to sell was denied. It was pleaded that the same was result of forgery.

3. On the basis of pleadings, Court of First Instance framed the following issues :

1. Whether the plaintiff is entitled to a decree for specific performance of agreement to sell dated 26.11.2008, as prayed for? OPP
2. Whether the plaintiff is entitled to a decree for permanent injunction as prayed for? OPP.



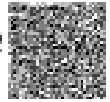
3. Whether the suit of the plaintiff is not maintainable in its present form? OPD.
4. Whether the plaintiff has no locus-standi or cause of action to file the present suit? OPD.
5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.
6. Whether the suit of the plaintiff is barred by limitation? OPD.
7. Relief.

4. While answering issue No.1, Trial Court held that even though the plaintiff has successfully proved execution of agreement to sell, but keeping in view that Anup Singh was missing and has not been declared as dead, the plaintiff is entitled only to alternate relief. Decree of refund of Rs.3,00,000/- along with interest @ 6% from the date of filing the suit till recovery/realisation, was granted in favour of the plaintiff

5. Feeling dissatisfied the plaintiff approached Appellate Court.

6. Appellate Court while maintaining the findings recorded by the Trial Court w.r.t. execution of agreement to sell found that the plaintiff successfully proved his readiness and willingness. Anup Singh having gone missing, cannot be an impediment in granting him main relief of specific performance.

7. In appeal, present appellant Sheela Devi filed an application seeking impleadment being legally wedded wife of Anup Singh. The same was opposed by the plaintiff claiming that appellant is not legally wedded



wife of Anup Singh, but was rather wife of Shobh Ram son of Bhima. The application stands rejected vide order dated 13.04.2023. Against which CR No.4821 of 2024 has been preferred.

8. In the considered opinion of this Court, there is no ground to interfere in the concurrent findings of fact recorded by the Courts below w.r.t. execution of agreement to sell by Anup Singh. So far as issue of readiness and willingness is concerned, the plaintiff Jatinder Singh who appeared as PW1 categorically stated in his testimony that he remained present in the O/o Sub Registrar on the target date i.e. 15.06.2009 along with balance sale consideration and registration charges. However, in cross-examination, not even a suggestion was put to him w.r.t. non-availability of funds with him to perform his part. The Appellate Court having found that the plaintiff remained ready and willing to perform his part and successfully proved the execution of agreement to sell, rightly granted decree of specific performance in favour of the plaintiff. There is nothing on record to show that the findings recorded by the Courts below are perverse in any manner. Once Anup Singh himself entered into an agreement to sell of 8 Kanals of land in favour of the plaintiff, this Court finds no reason to interfere in the findings recorded by the Courts below on the ground of hardship as pressed into service by counsel for the appellant in a half hearted attempt.
9. In view of above, finding no merit in the instant appeal, the same is ordered to be dismissed.



10. Pending application, if any, shall also stand disposed off.

February 13, 2025

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(Pankaj Jain)

Judge