



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

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**RSA-3432-2023 (O&M)
Date of decision : 05.03.2025**

Subhadhra Devi**..... Appellant**

versus

Jai Pal Saini and another**..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Vishal Pundir, Advocate and
Mr. Jyoti Prasad, Advocate
for the appellant.

PANKAJ JAIN, J. (Oral)

1. Defendant is in second appeal.
2. Plaintiff filed suit for specific performance qua residential property measuring 75 sq. meters situated in the urban estate, Kurukshetra. As per the plaintiff, defendant No.1 was allotted the suit property by defendant No.2. She agreed to sell the same in favour of the plaintiff for a sum of Rs.2,90,000/-. Defendant No.1 received entire sale consideration from the plaintiff. All the documents related to the plot in question were handed over to the plaintiff. Owing to the condition barring further transfer, parties agreed to get the sale deed executed in favour of the plaintiff on expiry of 10 years i.e. after 25.01.2012. As per the plaintiff, the remaining amount of Rs.10,000/- was to be paid directly to defendant No.2. Plaintiff visited defendant No.2 on 05.11.2007. Balance amount of Rs.15,300/- was deposited by plaintiff in the account of defendant No.1 under his signatures.



Defendant No.2 issued receipt of the said amount to the plaintiff, but in the name of defendant No.1. In terms of clause 12(ii) of the allotment letter dated 25.01.2002, 10 years lapsed on 25.01.2012. Despite repeated requests made to defendant No.1, she failed to transfer the property in question in favour of the plaintiff. As per the plaintiff, son of defendant No.1 is serving in Haryana Police and is posted at Ambala. Under the said influence, defendant No.1 filed an application at Police Station Mahesh Nagar, Ambala alleging loss of the original documents and DDR was recorded. After it came to notice of the plaintiff, he was constrained to move application before defendant No.2 mentioning the entire facts. Both the parties were called by defendant No.2, wherein defendant No.1 admitted her signatures on agreement to sell.

3. Defendant No.1 filed written statement controverting averments made in the plaint. It was claimed that agreement to sell dated 29.05.2006 propounded by the plaintiff, was a false and fabricated document without any consideration. The same is result of fraud played by Kulwant Singh Jossan, who is a property dealer by profession. He resides in the neighbourhood of the answering defendant. As per the defendant, when she applied for allotment of the plot in dispute, Kulwant Singh Jossan on the pretext of helping her, got number of documents signed from her. Those blank papers have been misutilized for creating the agreement to sell. It was further claimed that the price of the house in question in the year 2006 was not less than 15,00,000/- and presently is not less than 30,00,000/-. Defendant No.1 never intended to sell the plot in question and thus, there was no question of executing agreement to sell in favour of the plaintiff.



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

- “1. Whether the plaintiff is entitled for a decree of specific performance of agreement dated 29.5.2006 as prayed for? OPP
2. Whether the plaintiff is entitled to decree of permanent injunction as prayed for? OPP
3. Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit? OPD
4. Whether the plaintiff has not come to the Court with clean hands and has concealed the true and material facts from the Court? OPD
5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
6. Whether this Court has no jurisdiction to entertain and try the present suit? OPD
7. Relief.”

5. Trial Court after analyzing the evidence on record threadbare came to the conclusion that all the original documents pertaining the property in question are in custody of the plaintiff. Attesting witnesses to the agreement to sell have been examined. Property dealer who acted as a catalyst in the transaction, deposed in favour of the plaintiff. Apart from bald statement that the signatures on the blank stamp papers were misutilized, no evidence was led by the defendants to prove her defence. Defendant claims that her signatures were obtained for allotment, whereas the stamp paper shows that the same was purchased on 29.05.2006. Since, defendant was not disputing her signatures on the stamp papers, thus the plaintiff having proved agreement to sell in his favour was entitled to decree of specific performance.



6. Dissatisfied defendant preferred appeal. Lower Appellate Court has affirmed the findings recorded by the Court of first instance.

7. Mr. Ashish Aggarwal, learned senior counsel appearing for the appellant has eloquently argued that the Courts below erred in ignoring the fact that the agreement to sell is on printed format. No scribe has been examined. No stamp vendor was produced to prove the sale of the stamp paper. Recital of possession has been found to be wrong which renders agreement suspicious. There is no averment regarding readiness and willingness and thus, in the absence of compliance of Section 16(c) read with Order VI Rule 3, form 47 and 48 appended to Code of Civil Procedure, the suit ought to have been dismissed. He further submits that bare perusal of the judgment passed by Lower Appellate Court shall reveal that the same has been passed in violation of the provisions contained under Order XLI Rule 31 CPC. It has been further contended that 18 years have passed. Prices of urban properties have escalated and thus, it would be against the equity to grant specific performance in favour of the plaintiff. Mr. Aggarwal submits that it is a case wherein a property dealer obtained signatures of the plaintiff on the pretext of applying for allotment of the plot and thereafter misused the same to manufacture agreement to sell to deprive an innocent lady of her property.

8. I have heard counsel for the appellant and have carefully gone through the records of the case.

9. The signatures on agreement to sell are not in dispute. It has also come on record that all the original documents pertaining to the plot in question are in possession of the plaintiff. Senior counsel has



tried hard to put forth the stand of the defendant regarding her signatures having been obtained at the time of allotment. On being asked as to when defendant No.1 applied for allotment, Mr. Aggarwal candidly admits that the same was prior to allotment in 2002. The stamp paper on which the documents including agreement to sell, affidavit, indemnity bond etc were executed are all dated 28.05.2006. As per the endorsement on the back of the stamp paper, the same were sold on 28.05.2006. If the defence raised by the defendant has to be believed, defendant has to explain as to how her signatures came on the stamp papers sold on 28.05.2006.

10. In the considered opinion of this Court, there cannot be any explanation to the same. The unexplained pertinent fact is sufficient to demolish the defence raised by the defendant of her signatures having been obtained at the time of allotment of the plot by a property dealer.

11. Coming to the plea of readiness and willingness, receipt qua amount of Rs.2,80,000/- which is the entire sale consideration, apart from Rs.10,000/- which was to be paid to HUDA stands proved by the plaintiff. Thus, the plea raised by senior counsel with respect to non-compliance of Section 16(c) also deserves to be noted to be rejected.

12. The original documents qua property being in possession of the plaintiff assume significance in view of the fact that there was a long time lapse between agreement to sell and the agreed date for execution of sale deed owing to terms and conditions of the allotment letter which barred further transfer for 10 years.

13. The provision as contained under Section 55 of the Transfer of Property Act, 1882 explains the plaintiff being in possession



of the original documents qua the property in question. Section 55 of the Act deals with rights and liabilities of buyer and seller. The same reads as under:-

“55. Rights and liabilities of buyer and seller.—

In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:—

- (1) The seller is bound—
 - (a) to disclose to the buyer any material defect in the property or in the seller’s title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;
 - (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller’s possession or power;
 - (c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;
 - (d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;
 - (e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;
 - (f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;
 - (g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.
- (2) The seller shall be deemed to contract with the buyer



that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power :

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (b) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—
(a) to the rents and profits of the property till the ownership thereof passes to the buyer;
(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer,
any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date



on which possession has been delivered.

- (5) The buyer is bound—
- (a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;
 - (b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from encumbrances, the buyer may retain out of the purchase-money the amount of any encumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;
 - (c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;
 - (d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any encumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.
- (6) The buyer is entitled—
- (a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;
 - (b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to



obtain a decree for its rescission.”

14. Section 55(3) provide that where whole of the purchase money has been paid to the seller, he is bound to deliver to the buyer all documents of title relating to the property which are in his possession or power. Thus, all documents being in possession of the plaintiff also goes on to show that the entire sale consideration was paid and it is in lieu thereof only that defendant No.1 delivered all documents of title relating to the property in her possession to the plaintiff.

15. Coming on to the plea raised with respect to non-compliance of Section XLI Rule 31 CPC, this Court finds that a bare perusal of the judgment passed by the Lower Appellate Court reveals that the Lower Appellate Court has dealt with the entire evidence on record and after re-appreciating the same has come to a valid conclusion to which no exception can be taken.

16. Finding no merits in the present appeal, the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

05.03.2025

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes