

Punjab-Haryana High Court

Krishna Devi vs Parveen Kumar on 23 November, 2009

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA No.2430 of 2009 (O&M)

Date of decision : 23.11.2009

Krishna Devi

... Appellant

Versus

Parveen Kumar

... Respondents

CORAM : HON'BLE MRS.JUSTICE SABINA

Present: Mr.Sanjeev Sharma, Advocate for the appellant.

Sabina, J.

CM No.7162 C of 2009 Allowed as prayed for.

RSA No.2430 of 2009 Plaintiff-Parveen Kumar filed suit for possession by way of specific performance of agreement to sell dated 23.7.2002 qua the suit land and permanent injunction for restraining the defendant from alienating the suit land and from changing its nature in any manner. The suit of the plaintiff was decreed by Additional Civil Judge (Sr.Divn.) Panipat vide judgment and decree dated 4.10.2008. In appeal, the Addl. District Judge, Panipat, dismissed the appeal filed by the appellant-defendant vide judgment and decree dated 13.12.2008. Hence, the present appeal has been filed by the defendant.

The facts of the case as noticed by learned Additional District Judge, Panipat in para Nos.1 and 2 of its judgment which reads as under:-

1. Defendant executed an agreement to sell dated 23.7.2002 in favour of the plaintiff for the sale consideration of Rs.1,01,000/- qua the suit land detailed in the plaint. Requisite sale deed was to be got executed and registered upto 23.8.2008. Earnest money of Rs.75,000/- was paid by plaintiff to the defendant at the time of execution of said agreement to sell. On 23.08.2002 plaintiff kept on waiting for defendant throughout the day at the office of Sub-Registrar, Panipat. However, defendant did not turn up to get the requisite sale deed executed and registered. Plaintiff also issued a legal notice dated 20.5.2005 to the defendant through registered AD and UPC asking him to get the requisite sale deed executed and registered. However, defendant has failed to get the requisite sale deed executed and registered. Plaintiff claims to be still ready and willing to perform his part under the contract. Through present suit plaintiff sought decree of possession of suit land by way of specific performance of agreement to sell dated 23.7.2002 qua the suit land. Plaintiff also

sought permanent injunction for restraining defendant from alienating the suit land and from changing its nature in any manner.

2. In written statement, defendant raised preliminary objections, interalia pleading the non-maintainability of suit, absence of cause of action, absence of locus standi etc. On merits, defendant denied the allegations made by plaintiff. Defendant denied that plaintiff kept on waiting at the office of Sub- Registrar on 23.8.2002. Defendant asserted that she was present at the office of Sub-Registrar Panipat on 23.8.2002 throughout the day but plaintiff failed to turn up. Defendant alleged that as per a compromise reached in the presence of police, the plaintiff was to give an amount of Rs.39,320/- to the husband of defendant. According to defendant it was agreed that defendant will execute the requisite sale deed only after the plaintiff pays Rs.39,320/- to the husband of defendant. Defendant pleaded that requisite sale deed was to be got executed up to 13.12.2003 if plaintiff paid the above said amount to her husband failing which plaintiff would have no right in suit land. Defendant alleged that plaintiff failed to turn up in the office of Sub- Registrar, Panipat on 13.12.2003 also. Defendant denied the receipt of any legal notice by the plaintiff. Defendant sought the dismissal of suit of plaintiff."

From the pleadings of the parties, the following issues were framed by the learned trial Court:-

- "1. Whether the agreement to sell dated 23.7.2002 is valid and binding on the parties? OPP.
2. Whether the plaintiff has been ready and willing to perform his part of the contract? OPP
3. Whether suit is not maintainable? OPD.
4. Relief."

After hearing learned counsel for the appellant, I am of the opinion that the instant appeal is devoid of any merit and deserves to be dismissed.

The plaintiff (herein respondent) had filed a suit for possession by way of specific performance of agreement to sell dated 23.7.2002.

Both the courts below after appreciating the evidence led by the parties on record, have decreed the suit of the plaintiff. The learned Additional District Judge has observed in the judgment that defendant had not denied the execution of the agreement to sell. Rather the case of the defendant was that he was ready and willing to perform his part of the contract whereas the plaintiff had failed to appear on the stipulated date for execution of the sale deed i.e. 23.8.2002 before the Sub Registrar. The defendant also asserted that a compromise was effected between the parties on 13.11.2003 which was to substitute the agreement to sell. The plaintiff had denied the execution of

the compromise between the parties. Defendant however, failed to prove on record the original compromise deed. The learned Additional District Judge has observed that a photo copy of the compromise, placed on record, reveals that the same was neither signed nor thumb marked by the defendant. Since the alleged compromise was not signed or thumb marked by both the parties, the same was not binding on them. The plaintiff while appearing in the witness box had deposed that he was ready and willing to perform his part of the contract and he remained present in the office of Sub Registrar on the stipulated date for execution of the sale deed but defendant had failed to appear before the said office.

Both the courts below after appreciating the evidence led by the parties, placed on record, have given a finding of fact that the agreement to sell in question was duly executed between the parties and the plaintiff was ready and willing to perform his part of the contract. The said finding of fact cannot be interfered with in appeal by this Court. No substantial question of law arises for consideration in this appeal.

Dismissed.

SABINA ] JUDGE 23.11.2009 sd