

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

115

RSA-5989-2019 (O&M)

Date of Decision: 25.03.2025

KULDEEP KAUR

.....Appellant

Vs

BALWINDER SINGH AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Varun Baath, Advocate
for the appellant.

DEEPAK GUPTA, J.

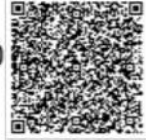
Suit for possession by way of specific performance, based upon an agreement to sell dated 17.12.2012, regarding property in dispute, as filed by plaintiff-Kuldeep Kaur (*appellant herein*) was dismissed by the trial Court on 26.05.2017 and the appeal filed by her was dismissed by the First Appellate Court on 24.01.2019. Against this concurrent finding, the plaintiff has approached this Court by way of present Regular Second Appeal.

2. It is contended by learned counsel that respondents-defendants were proceeded *ex parte* before the trial Court and so, the evidence produced by the appellant-plaintiff, was unrebutted and so the same could not have been ignored.

3. After going through the paper-book and considering the submissions made by learned counsel, I do not find merit in the appeal.

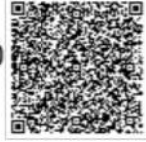
4. Before considering the contention, it will be apt to reproduce the observations made by the First Appellate Court, which read as under:-

“The plaintiff is claiming due execution of agreement dt.17.12.2012 (*wrongly mentioned as 17.12.2017*). In support of the said contention the plaintiff has herself stepped into the witness box besides examining two other witnesses. Perusal of the record shows that the plaintiff witnesses tendered their evidence by way of affidavits and thereafter on subsequent date the counsel for the ap-



pellant/plaintiff tendered three documents in evidence and thereafter closed the evidence. The three documents are, original agreement dt. 17.12.2012 EX P1, original affidavit dt. 16.3.2015 EX P2 and jamabandi for the year 2010-11 EX P3. It is strange that while the plaintiff was examining three witnesses, none of the witnesses placed on record the agreement to sell so as to identify specifically that it is that document which was executed between the parties. The oral testimony of all the plaintiff witnesses is to the extent that an agreement dt. 17.12.2012 was executed between parties. It is not in evidence of any witness that they tender some mark document or any photocopy of the original agreement to sell, to testify on oath that it is this document, which was executed between the parties. There cannot be any presumption of fact in favour of either of the party. This court is aware that the defendant were proceeded against *ex parte*, yet a bare minimum requirement of law does cast an onus on the plaintiff to prove his case by leading positive evidence. It is not as if the defendant were proceeded against *ex parte*, therefore the entire plea of the plaintiff is to be acceptance as a gospel truth without insisting on proving the basis document and its execution in evidence to support the case. The plaintiff did make an effort to lead three witnesses but none of the witnesses identified the agreement EX P1 to be the same document which was executed and bear the signature of the witnesses or defendant. Even the affidavit supporting the plea of the readiness and willingness is also not proved to be executed by producing the registering authority at the relevant time. Even the signature of either of the parties or marginal witness on the agreement or affidavit i.e., document EX P1 and EX P2 is proved or identified by the witnesses. It is in these circumstances, that the oral testimony of PW1, PW2 and PW3 cannot be connected with the document EX P1 and EX P2. The learned trial court has rightly returned a finding on the aforesaid lines and thus this court see no illegality or infirmity in the said determination. The argument address by the learned counsel before me thus fails. No other argument is raised or pressed by the counsel.”

5. It is evident from the above said observations that though the respondents-defendants were proceeded *ex parte* before the trial Court, but plaintiff did not produce evidence to prove the agreement dated 17.12.2012, which was the basis of his suit. Plaintiff simply tendered in evidence affidavits of three witnesses, who did not produce the agreement in question. Then, counsel



for the appellant-plaintiff had tendered in evidence original agreement dated 17.12.2012 as Ex.P-1, affidavit dated 16.03.2015 as Ex.P-2 and jamabandi for the year 2010-11 as Ex.P-3. None of the witnesses, whose affidavits were tendered in evidence by the plaintiff, testified that the agreement (Ex.P-1), later on tendered in evidence by counsel, was the same, which had been executed between the parties. Similarly, the readiness and willingness of the plaintiff has been found to be lacking in the absence of any cogent evidence to that effect.

6. Faced with the aforesaid situation, learned counsel for the appellant prays to remand the matter to the trial Court to grant opportunity to the appellant-plaintiff to produce the necessary evidence. There is no merit in the contention. No such prayer was made before the First Appellate Court by moving any application under Order 41 Rule 27 CPC to grant opportunity to plaintiff-appellant to examine the relevant witnesses so as to prove the agreement in question. As such, at this stage, the prayer as made by learned counsel for the appellant is found to be devoid of any merit.

7. On account of aforesaid discussion, this Court does not find any reason to disturb the concurrent findings of the facts, as recorded by the Courts below in the absence of any illegality or perversity.

No merits. Dismissed.

(DEEPAK GUPTA)
JUDGE

25.03.2025

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Whether speaking/reasoned : Yes
Whether reportable : No