



2025:PHHC:112592

RSA-1534-2023 (O&M)

[1]

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1534-2023 (O&M)
Date of decision: 25.08.2025

Rajesh Kumar

...Appellant

Versus

Sangeeta Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Sanjay Mittal, Advocate for the appellant.

DEEPAK GUPTA, J. (ORAL)

1. Defendant of the case is before this Court against concurrent findings of the Courts below.

2. As the perusal of the paper book would reveal that a suit for specific performance regarding the property in dispute was filed by respondent-plaintiff-Smt. Sangeeta Devi, based upon an agreement to sell dated 21.01.2008 executed by Rajesh Kumar (appellant herein) in her favour. The suit was decreed on 30.08.2016 by Ld. Civil Judge (Junior Division), Narnaul. The said judgment was upheld by the First Appellate Court on 06.09.2022, thus, dismissing the appeal of the defendant appellant.

3. Assailing the concurrent findings, it is contended by learned counsel for the appellant that as per the agreement, total sale consideration was Rs.12,50,000/- and that an amount of Rs.6,50,000/- was given as earnest money. Learned counsel submits that defendant did not receive an amount of Rs.5,00,000/- through cheque No.286851 dated 09.12.2007 as this cheque was subject matter of another agreement to sell executed between husband of the plaintiff and father of the defendant. It is also contended that agreement to sell dated 21.01.2008 is subsequent to



the cheque dated 09.12.2007 and so it cannot be considered to be a part of earnest money pertaining to the present transaction.

4. After hearing learned counsel at considerable length, this Court does not find merit in the contention.

5. The aforesaid contention was raised before the First Appellate Court and while rejecting the same, it was observed as under:-

"14. Exh.PI is the agreement to sell dated 21.01.2008 which had been executed between the plaintiff and defendant in relation to suit property. A bare glance at the recitals of said agreement in question reveal that it has been specifically mentioned therein that Rs.6,50,000/- were being paid by the plaintiff to the defendant in cash and an amount of Rs.5,00,000/-, which had already been paid to the defendant by the plaintiff, was to be adjusted/set off as against earnest money out of total sale consideration of Rs. 12,50,000/-. It has also been specifically mentioned therein that after this payment in cash and through cheque towards earnest money, the liability of plaintiff under agreement in question was limited to the extent of remaining balance amount of Rs.1,00,000/- only which she was to pay to the plaintiff on the day of execution and registration of sale deed. It has also been specifically mentioned therein that this agreement was being scribed and drafted at the instance of both the parties to agreement in question and that contents thereof had been read over and explained to both the parties to agreement in question who admitted the same to be correct as per their instructions. PW-1, the scribe of agreement in question, had also testified on oath that he had read over and explained the recitals of agreement in question to both the parties who admitted the same to be correct and only after understanding and admitting the correctness thereof, they had affixed their signatures thereon. He also testified that the attesting witnesses also affixed their signatures/thumb impression after understanding and admitting the correctness of contents of agreement in question and even father of defendant was present who had also signed



his consent to the contents thereof. He also testified that under agreement in question, it was agreed upon by the parties to the agreement that only Rs.1,00,000/- remained to be paid on the date of execution/registration of sale deed. The scribe PW-1 tendered in evidence copy of relevant extract of his deed register which is Exh.P2 and in this document also, there is entry regarding payment of Rs. 11,50,000/- as earnest money and balance sale consideration of Rs.1,00,000/-. This entry is also signed by the parties to the suit. PW-3, the attesting witnesses, had testified in the same vein that Rs.1,00,000/- were to be paid towards balance sale consideration by the plaintiff upto 31.12.2008 and, in cross-examination, PW-3 stated in clear-cut terms that the defendant himself told him that he had already received a cheque of Rs.5,00,000/- from the plaintiff in connection with agreement in question. The plaintiff PW-2, during the course of cross-examination, denied the suggestion in categorical terms that the cheque had been given by her on behalf of her husband towards repayment of earnest money which her husband received from the father of defendant in pursuance of separate agreement to sell dated 10.09.2007. And, as noticed earlier, the defendant did not dispute the execution of agreement in question or his signatures over the same at any stage while filing written statement or leading evidence. In modern times, no reasonable and prudent person can be expected to sign any document without being aware of its consequences. It is neither the case of the defendant nor it has been pleaded anywhere that when he affixed his signatures on agreement Exh.P1, the scribe PW-1 did not explain or read over the contents to them, hence, he was not aware about the adjustment of amount of disputed cheque towards earnest money under agreement in question. The defendant himself did not act in prudent manner and likewise, his father, who was also present at that time and give his consent to the execution of agreement in question, did not object to this part of agreement in question. There is nothing on the file which could show that there was any misrepresentation applied on behalf of the plaintiff which induced the



defendant to put signatures on agreement in question without the knowledge the contents of the same. It is significant to note that, as per the version of defendant, on the date when agreement in question Exh.P1 was executed, another agreement to sell Exh. D1 was executed between his father and the husband of the plaintiff regarding the land of husband of plaintiff and this Court failed to understand as to why the disputed cheque was mentioned in agreement in question Exh.P1 and not in that agreement to sell Exh. D1 executed between his father and the husband of the plaintiff. In addition, the documentary evidence of the defendant, available on record, indicate that the payment of cheque, which had been given by the father of defendant to the husband of plaintiff in respect of their own agreement to sell vide cheque No. 186921 dated 10.09.2007 Exh.DW1/C had been stopped by the defendant himself vide intimation dated 17.11.2007 Exh.DW1/D.

15. *In view of the admission in the written statement, the defendant cannot be allowed to wriggle out of the contract and come forward with a new case that the amount of Rs.5,00,000/- through disputed cheque was in fact in the shape of repayment of money at the behest of husband of plaintiff to the father of defendant after separate transaction between them through another agreement to sell dated 10.09.2007 in respect of land of husband of plaintiff had failed. Rather, from the statement of the plaintiff PW-2 and admission of defendant DW-1, who candidly admitted the execution of agreement in question Exh.P1, it is established that agreement Exh.P1 was executed between the parties of their free will and subject to terms and conditions as laid out therein. The testimony of plaintiff, scribe and attesting witness remained consistent and nothing to shatter their veracity could be elucidated during their cross-examination by the defendant to extract anything favourable to him. Rather, testimony of PW-1 Shivhari Bhardwaj. who had drafted the agreement, that he had executed the agreement at the instance of plaintiff and defendant and that he had read over and explained the contents of agreement to the parties and witnesses and thereafter the*



parties appended their signatures/thumb impressions has gone unchallenged. And, it is important to note that, in cross-examination, the defendant DW-1 admitted that he had got encashed disputed cheque and had received Rs. 5,00,000/- thereunder. Indisputably, the defendant had admitted having received Rs.6,50,000/- in cash by making entry in his own hand over Exh.P1. Meaning thereby, the defendant had received Rs.11,50,000/- as earnest money from the plaintiff under agreement in question Exh.Pl. In absence of anything cogent and convincing evidence to the contrary, this Court sees no reason to disbelieve or discard the testimony of plaintiff or her witnesses and from the evidence led on the file and admission of defendant DW-1, execution of agreement in toto by defendant is duly established and it is also duly proved that he had received earnest money of Rs.11,50,000/-Affidavit Exh.P3 has also been tendered by the plaintiff which shows that she alongwith balance sale consideration and other miscellaneous expenses waited since 9:00 A.M. for the presence of defendant and when he did not turn up till closing of office hours, she appeared before the Sub Registrar on 31.12.2008 and got her presence marked in respect of her readiness and willingness to get the sale deed executed and registered. Though defendant also placed on record affidavit Exh.D6 to prove his readiness and willingness by claiming that he got marked his presence before the Sub Registrar on 31.12.2008 but nowhere in affidavit Exh.D6 it is mentioned that he had waited for the plaintiff throughout the day since morning till closing of office hours. As such, the plaintiff has always been ready and willing to perform her part of agreement but the defendant failed to execute and register the sale deed in her favour. The law cited by learned counsel for appellant are not applicable to the facts of the present case.”

6. It is thus, evident from the aforesaid observations that in the agreement to sell dated 21.01.2008 (Ex.P-1), execution of which is not disputed by the appellant defendant, there is specific recital regarding the amount of Rs.6,50,000/- having been received by the appellant in cash;



and that amount of Rs.5,00,000/- had already been paid to him by the plaintiff, which was to be adjusted/set off against earnest money out of total sale consideration of Rs.12,50,000/-. It was further specifically mentioned in the agreement that after this payment in cash and through cheque towards the earnest money, the liability of the plaintiff i.e. respondent herein under the agreement in question was limited to the extent of balance amount of Rs.1,00,000/- only, which she was required to pay to the defendant on the date of execution and registration of the sale deed.

7. The execution of the aforesaid agreement was proved not only by the testimony of plaintiff but was further proved by the statement of scribe (PW-1) and one of the attesting witness (PW-3).

8. The Appellate Court has rightly observed that as per the version of the defendant-appellant, on the date when agreement in question (Ex.P-1) was executed, another agreement to sell (Ex.D-1) was executed between his father and the husband of the plaintiff regarding the land of husband of the plaintiff. However, it was not explained as to why there was mention of the disputed cheque in agreement to sell (Ex.P-1) and not in the agreement to sell (Ex.D-1) executed between the father of the defendant appellant and the husband of the plaintiff. Not only this, it was further found that the payment of the cheque which had been given by the father of the defendant to the husband of the plaintiff in respect of their own agreement to sell vide cheque No.186921 dated 10.09.2007 had been stopped by the defendant himself vide intimation dated 17.11.2007 (Ex.DW1/D).

9. In view of the aforesaid observations, this Court has no reason to differ with the concurrent findings of facts as recorded by the Courts



2025:PHHC:112592

RSA-1534-2023 (O&M)

[7]

2025:PHHC:112592



below to the effect that amount of Rs.5,00,000/- paid through cheque was in respect of part of the earnest money pertaining to the agreement to sell (Ex.P-1) between the parties.

10. This Court does not find any merit in the present appeal and accordingly, the same is dismissed.

25.08.2025

Yogesh

**(DEEPAK GUPTA)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**