

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

CS No.1 of 2014.

Judgment reserved on: 14.8.2015.

Date of judgment: September 30, 2015.

Smt. Aarti D/o Sh.Raghubir Singh. ...Plaintiff.

Vs.

Lalit Kumar Sharma S/o Panna Lal Sharma. ..Defendant.

Coram:

Hon'ble Mr. Justice P.S.Rana, Judge.

Whether approved for reporting? yes.

For the appellant: Mr Dushyant Dadwal, Advocate.

For defendant: Ex parte.

P.S.Rana, Judge.

Judgment: Present civil suit is filed for decree of specific performance of agreement dated 4.1.2013. In addition decree of mandatory injunction also sought in favour of plaintiff and against defendant directing defendant to

Whether reporters of the Local papers are allowed to see the judgment? yes

execute sale deed and decree of permanent prohibitory injunction is also sought in favour of plaintiff and against defendant from interfering in the peaceful possession of plaintiff. Additional relief also sought restraining defendant through his legal representative or any authorized person for creating interest in favour of third party and from alienating and changing nature of suit property with costs.

2. It is pleaded that on 4.1.2013 defendant executed agreement of sale with plaintiff relating to suit property comprised in khata No.117 Khatauni No. 226 khasra No.823 measuring 0-44-78 hectare in consideration amount of Rs.2600000/- (Twenty six lacs) in favour of Smt. Aarti plaintiff. It is further pleaded that in total defendant received Rs.1600000/-(Sixteen lacs). It is further pleaded that remaining consideration amount of Rs.1000000/- (Ten lacs) was to be paid at the time of execution of sale deed. It is further pleaded that defendant had also given possession of suit property to the plaintiff at the time of execution of agreement of sale. It is further pleaded that sale deed was to be executed on or before 15.10.2013. It is further pleaded that defendant did not execute sale deed. It is further

pleaded that plaintiff is ready and willing to perform her part of the contract. It is further pleaded that defendant did not perform his part of contract. Prayer for decree of suit as mentioned in relief clause sought.

3. Defendant did not appear in court despite service. Defendant was proceeded ex-party.

4. Court heard learned Advocate appearing on behalf of plaintiff and Court also perused entire record carefully.

5.Oral witnesses examined by plaintiff:

5.1 PW1 Puja Gupta, Advocate has stated that agreement of sale Ext PW1/A was drafted by her at the instance of plaintiff and defendant relating to suit property. She has stated that total consideration amount was Rs.2600000/- (Twenty six lacs). She has stated that out of Rs.2600000/- (Twenty six lacs) Rs.1550000/- (Fifteen lacs fifty thousand) were already paid to defendant. She has stated that legal notice Ext PW1/B was issued to defendant. She has stated that Ext PW1/C is registered receipt of legal notice dated 15.11.2013 issued by her.

5.2 PW2 Munshi Lal has stated that agreement Ext PW1/A was executed between plaintiff and defendant relating to suit property. He has stated that total consideration amount of sale was Rs.2600000/- (Twenty six lacs). He has stated that Rs.1600000/- (Sixteen lacs) already paid to defendant by plaintiff. He has stated that he has signed agreement of sale as marginal witness. He has stated that scribe and defendant have also signed in his presence. He has stated that sale deed was to be executed on or before 15.10.2013. He has stated that sale agreement was executed on 4.1.2013. He has stated that defendant has also given receipt of Rs.50000/- (Fifty thousand) which is Ext.PW2/A on the back side of Ext PW1/A.

5.3 PW3 Aarti has stated that agreement of sale was executed inter-se the parties on 4.1.2013 at Kullu. She has stated that total sale consideration amount was Rs.2600000/- (Twenty six lacs). She has stated that Rs.1600000/- (Sixteen lacs) was paid to defendant through cheques and in cash. She has stated that Rs.150000/- (One lac fifty thousand) was paid through cheque No.782812 dated 7.5.2012 and Rs.50000/- (Fifty thousand) was paid

through cheque No.782813 dated 12.5.2012. She has stated that Rs.400000/- (Four lacs) was paid in cash in Indian currency as earnest money. She has stated that Rs.450000/- (Four lacs fifty thousand) was paid through cheque No.620698 on 28.9.2013. She has stated that Rs.500000/- (Five lacs) was paid through cheque No.620697 in October 2013 from KCC Bank. She has stated that Rs.500000/- (Fifty thousand) in cash was paid on 2.7.2013 to defendant and receipt was issued by defendant on the back of agreement Ext PW2/A. She has stated that sale deed was to be executed on or before 15.10.2013. She has stated that on 15.10.2013 she went to Court of Sub Registrar Theog. She has stated that defendant in spite of several requests and reminders did not execute sale deed. She has stated that she had also issued legal notice Ext PW1/B. She has stated that she would pay remaining consideration amount of Rs.1000000/- (Ten lacs) as directed by Court.

6. Following documentary evidence placed on record. (1) Ext PW1/A agreement of sale dated 4.1.2013. (2) Ext PW3/C application filed by plaintiff Aarti before

Tehsildar Theog. (3) Ext PW1/B notice given by plaintiff to defendant for execution of sale deed. (4) Ext PW3/A details of amount deposited and withdrawal from Kangra Central Cooperative Bank Limited. (5) Ext PW3/B statement of accounts for the period 1.4.2012 to 16.5.2012.

7. Submission of learned Advocate appearing on behalf of plaintiff that plaintiff is legally entitled for specific performance of agreement dated 4.1.2013 executed inter se the parties is accepted for the reasons hereinafter mentioned. It is proved on record that defendant had executed sale agreement with plaintiff on 4.1.2013 in the presence of marginal witnesses. Agreement Ext PW1/A is proved by way of testimony of PW1 Puja Gupta Advocate. PW1 Puja Gupta Advocate has specifically stated in positive manner that agreement Ext PW1/A was executed inter se the parties in consideration amount of Rs.2600000/- (Twenty six lacs). Testimony of PW1 Puja Gupta is corroborated by PW2 Munshi Lal who is marginal witness of agreement dated 4.1.2013. Testimony of PW1 Puja Gupta and PW2 Munshi is further corroborated by PW3 Aarti. Testimonies of PW1 Puja Gupta, PW2 Munshi Lal and PW3

Aarti are trust worthy, reliable and inspires confidence of Court. There is no reason to disbelieve the testimony of PW1, PW2 and PW3. Testimony of PW1, PW2 and PW3 remained un-rebutted on record. Defendant did not appear in the witness box in order to rebut the testimony of PW1, PW2 and PW3. DW1 also did not appear in the witness box for the purpose of cross-examination. Hence adverse inference under Section 114(g) of the Indian Evidence Act 1872 is drawn against defendant. It was held in case reported in AIR 1999 S.C. 1441 titled Vidhyadhar Vs. Mankikrao that if party did not enter into the witness box then Court should draw adverse inference against the parties. Also see SLJ 1999 724 titled Iswar Bhai C.Patel Vs. Harihar Behera and another. It is held that plaintiff is legally entitled for specific performance of agreement of sale.

8. Submission of learned Advocate appearing on behalf of plaintiff that plaintiff is entitled for decree of recovery of Rs.3100000/- (Thirty one lacs) on account of loss and damage suffered by plaintiff on account of non-execution of sale deed and on account of non-registration of sale deed is rejected being devoid of any force for the

reasons hereinafter mentioned. There is special recital in agreement that in case defendant would not execute sale deed within stipulated period then plaintiff will be legally entitled to execute sale deed through Court. There is no recital in the agreement that plaintiff would be entitled for the recovery of Rs.3100000/- (Thirty one lacs) on account of loss and damage suffered by plaintiff and on account of non-execution of sale deed. It is well settled law that no party can be allowed to flout terms and conditions of sale agreement. In view of the fact that there is no recital of payment of loss and damage by defendant to plaintiff on account of non-execution of sale deed court is of the opinion that it is not expedient in the ends of justice to grant relief of recovery of Rs.3100000/- (Thirty one lacs) to the plaintiff.

9. Submission of learned Advocate appearing on behalf of plaintiff that decree of prohibitory injunction be passed in favour of plaintiff restraining the defendant, his legal representative, agents, employees and assignees from interfering with the possession of plaintiff is accepted for the reasons hereinafter mentioned. Court has carefully

perused agreement Ext PW1/A placed on record. There is special recital in the agreement that possession of the suit land was also given to the plaintiff at the time of execution of agreement of sale deed dated 4.1.2013. In view of the recital of possession of suit land in favour of plaintiff in the agreement itself court is of the opinion that plaintiff is legally entitled for the protection of possession of suit property. Court is of the opinion that it is expedient in the ends of justice to grant decree of prohibitory injunction as prayed.

10. Submission of learned Advocate appearing on behalf of plaintiff that plaintiff is also entitled for decree of mandatory injunction directing the defendant to execute sale deed in favour of plaintiff is also accepted for the reasons hereinafter mentioned. There is special recital in agreement dated 4.1.2013 Ext PW1/A placed on record that in case defendant will not execute sale deed then plaintiff will approach Court for the execution of agreement. In view of positive recital in the agreement court is of the opinion that it is expedient in the ends of justice to grant decree of mandatory injunction as sought by plaintiff. As per

jamabandi for the year 2007-2008 placed on record it is proved that defendant Lalit Kumar had purchased suit land through sale deed No. 167 of 2011 dated 29.3.2011. A contract of sale of immovable property is a contract that a sale of property would take place on terms settled between the parties. Contract of sale itself does not create any interest or charge on such property. An agreement of sale is merely a document creating a right to obtain another document of sale on fulfillment of terms and conditions mentioned in the agreement. The ownership transferred to the buyer only on the execution of sale deed by seller. See AIR 1994 Bombay 228 titled Crest Hotel Ltd. Vs. Assistant Superintendent of Stamps. Also see 2010 (8) SCC 383 titled Meghmala and others vs. G. Narasimha Reddy and others.

Relief.

11. In view of above stated facts ex party decree is passed partly with costs in favour of plaintiff and against defendant to the effect.(1) That plaintiff will deposit remaining consideration amount of Rs.1000000/- (Ten lacs) in Court within one month and thereafter defendant will

execute sale deed in favour of plaintiff Aarti within one month qua 2985/4478 shares measuring 0-29-85 hectares qua immovable land comprised in khata No. 117 khatauni No. 226 khasra No. 823 situated in mohal Dhrach Patwar circle Majhar Tehsil Theog District Shimla HP. Decree of mandatory injunction passed accordingly in favour of plaintiff and against defendant. (2) After execution of sale deed defendant or his legal heirs or agents will not interfere in the peaceful possession of plaintiff over suit property and decree of prohibitory injunction is also passed in favour of plaintiff against defendant. (3) Relief of recovery of amount of Rs.3100000/- (Thirty one lacs) on account of loss and damage suffered by plaintiff declined in view of terms and conditions of agreement Ext PW1/A placed on record. Registrar Judicial will prepare decree sheet in accordance with law. Civil suit No. 1 of 2014 is disposed of. Pending application if any also disposed of.

(P.S.Rana)
Judge.

September 30,2015(R).

