

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.777 of 2014

ORDER:

Heard Sri Manjunath Allur, learned counsel for the petitioner and Sri Mahadeva Kanthrigala, learned counsel for the respondent.

2. This Revision Petition is filed challenging the order dt.03-10-2013 in I.A.No.2275 of 2012 in O.S.No.825 of 2011 of the Special Sessions Judge for trial of cases under the SC/ST (POA) Act, 1989-cum-Additional District Judge, at LB Nagar, Ranga Reddy District.

3. Petitioner herein is the defendant in the suit. The respondent/plaintiff filed the suit for specific performance of an agreement of sale dt.12-10-2010 under which the petitioner allegedly agreed to sell the suit schedule property to him.

4. The petitioner filed I.A.No.2275 of 2012 to reject the plaint on the ground that the suit is not maintainable since the said agreement of sale is an unregistered one. It was further contended that 1st respondent, who is in possession, is seeking execution of sale deed pursuant to the unregistered agreement of sale 12-10-2010, that therefore he is in fact seeking only part performance of the contract, and that therefore the plaint

should be rejected.

5. By order dt.03-10-2013, the Court below dismissed the said application. It referred to Order 7 Rule 11 (d) CPC and held that the suit is not barred by any of the provisions contained therein.

6. Challenging the same, this Revision Petition is filed.

7. Learned counsel for the petitioner vehemently contended that what the 1st respondent is seeking is in the effect only part performance of the agreement of sale dt.12-10-2010 since possession was already with him; the suit therefore has to be treated as a suit for part performance invoking Section 53-A of the Transfer of Property Act, 1882 (for short 'the Act') in 2001, there was amendment to proviso of Section 49 of the Registration Act, 1908 making in applicable the said proviso insofar as unregistered documents which are sought to be marked as evidence of part performance of contract under Section 53-A of the Act are concerned; that a corresponding amendment had also been made to Section 53-A of the Act; therefore the Court below is not right in taking the view that the plaint cannot be rejected. He also placed reliance on the judgment in **Gurbachan Singh Vs. Raghubir Singh**^[1] and contended that 1st respondent was in possession of the property in dispute in

part performance of the agreement of sale and therefore the Section 49 bars an agreement of sale to be received in evidence.

8. I am unable to agree with the submissions of the learned counsel for the petitioner. The relief claimed by 1st respondent in the suit cannot be said to be a relief of part performance of the agreement of sale within the meaning of the said term in Section 53-A of the Act. The plea of 1st respondent is that an agreement of sale was executed in his favour by the petitioner and although possession had been already delivered, sale deed has not been executed in his favour. It is not as if 1st respondent is contending that because he has been delivered possession by 1st respondent pursuant to the said agreement of sale and in part performance thereof, so his possession needs to be protected as against the petitioner. He is not seeking any relief of injunction on that basis.

9. Section 53-A of the Act is a doctrine which entitles a person in possession under an agreement of sale, who is continuing such possession in part performance of the contract and had done some acts in furtherance thereof, and is also willing to perform this part of the contract, to protect his possession. The said doctrine would not apply where 1st respondent has sought

relief of specific performance. Therefore, the amendment of Section 49 of the Registration Act, 1908 or Section 53-A of the Act has no bearing on the issue. In this view of the matter, since proviso to Section 49 of the Registration Act, 1908 permits an unregistered document to be received as evidence in a suit for specific performance, even though the agreement of sale dt.12-10-2010 is unregistered, I hold that it is admissible in evidence.

10. In any event, the fact that a document, to be filed as evidence by a party in the suit is unregistered or unstamped is not a ground to reject the plaint under Order 7 Rule 11 (d) CPC.

11. Therefore, the very application I.A.No.2275 of 2012 in O.S.No.825 of 2011 under Order 7 Rule 11 (d) is misconceived.

12. I also do not agree with the principle said to have been laid down in **Gurbachan Singh** (supra) that in a suit for specific performance, if a plaintiff is in possession of the property, the agreement of sale cannot be received in evidence in view of the amendment to Section 49 of the Registration Act, 1908, for the above reasons.

13. I therefore do not find any merit in the Civil Revision Petition and the same is accordingly dismissed. No costs.

14. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-09-2015

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[\[1\]](#) AIR 2010 Punjab & Haryana 77