

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 232 of 2012 (O&M)

Date of decision: December 15, 2015

Binder Singh

...Petitioner

Versus

Rajinder Kaur and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

- 1. Whether Reporters of local papers may be allowed to see the judgment? Yes**
- 2. To be referred to the Reporters or not ? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Ajay Pal Singh, Advocate,
for the petitioner.

Mr. Rajdeep Singh Gill, Advocate,
for the respondents.

K. KANNAN, J. (Oral)

1. The plaintiffs who filed a suit for specific performance sought for injunction against their dispossession had a case to contend that they had parted with half the consideration and they were put in possession of the property by the defendant. The trial court granted the relief and the appellate court provided for only restraint against alienation and disallowed the relief of protection against dispossession. The revision is by the plaintiff.

2. Before much of arguments underwent, I asked the counsel about the character of the possession pursuant to the agreement. He says that he was put in possession in part performance of the agreement. After coming to force of the amendment of Section 53-A of the Transfer of

Property Act by the Act 40 of 2001, a plea in part performance for protection against the vendor or alienee will be competent, only if the agreement that is sued upon is registered. If the document is not registered and not written on proper stamps, a bar operates under three enactments. Section 53-A provides for protection only for a registered instrument and if not, a claim for part performance is not competent. Section 17 (1) (a) of the Registration Act states that the document that contains a contract to transfer for the purpose of Section 53-A shall be registered, if it to take effect. Section 49 of the Registration Act, which shall be read with Section 17 (1A) states specifically that no document requiring registration shall affect immovable property comprised therein. The proviso will be only to protect the prayer for using unregistered document for specific performance and cannot extend to any transaction or relief which is also the relief of specific performance. A document that is required to be registered and which contains a recital for delivery of possession would also require to be stamped as a conveyance as specified in Column 2, Entry 23 of Schedule 1A of the Indian Stamp Act, 1989 and amended by the Punjab. I sought the counsel for assistance, if the agreement provides for a clause of delivery of possession. He makes more or less assertion, it does, but I do not have the benefit of seeing the document. I leave it, therefore, to the trial to see if the document contains reference to delivery of possession and if it does, I direct the trial court to impound the document and collect stamp duty, penalty in the manner provided under the provisions of the Stamp Act. If the stamp duty is not paid, the document shall be eschewed and shall not be admitted in evidence as laid down under Section 35 of the Stamp Act.

3. For all the reasons, the claim to interim relief for the plaintiff is untenable. The order already passed is sustained and the revision petition is dismissed with costs of ₹3500/- for the respondents.

December 15, 2015
prem

(K.KANNAN)
JUDGE