

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

Regular Second Appeal No.2543 of 2011 (O&M)

Date of decision: 14.5.2015

Smt.Damyanti

... Appellant

Versus

Samarjeet and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms.Charu Sharma, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

This is an appeal against the judgment of reversal in a suit for possession by way of specific performance of a registered agreement to sell the suit land. The trial Court decreed the suit erroneously as held by the first appeal Court. The subsequent sale of the same property to the 2nd defendant was by of a subsequent agreement to sell which was neither registered nor was possession delivered. The appeal Court noticed the provisions of Section 48 of the Registration Act, 1908 which provide that in all non-testamentary dispositions by non-testamentary documents and duly registered under the Act relating to any property which is moveable or immoveable shall take effect as against any oral agreement of the declaration relating to such property owners. Where agreement or

declaration is accompanied or followed by delivery of possession, then the same would constitute a valid transfer under the law and would require compulsory registration failing which it would have no evidentiary value unless stamp duty is paid.

The appeal court returned a finding when admittedly; possession of land was delivered by defendant No.1 to defendant No.2, the subsequent vendee. At the time of signing agreement Ex.D1 and coming into existence, when not a registered document, then it follows that agreement Ex.P1 shall take effect as against the agreement Ex.D1. Besides, sale deed Ex.D2 was executed by defendant No.1 in favour of defendant No.2 *lis pendens* in violation of the status quo order granted by the Civil Court in the same proceedings on May 18, 2001 restraining alienation of the suit property till August 6, 2001 during which period the sale deed was registered. Despite Court directions, and in contempt of them, the subsequent sale was effected between the defendants and rights, if any, created thereunder are hit by the doctrine of *lis pendens* and would not affect the rights of the plaintiff to whom the corpus was offered first by the opposite party defendant No 1.

In the above scenario I find nothing wrong with the judgment and decree passed by learned Additional District Judge, Palwal dated November 22, 2010 and would not interfere with it in second appeal since no question of law, much less a substantial one, arises in this appeal requiring consideration for its admission for regular hearing. The findings of fact and law recorded by the courts *a quo* are found sound in law and based on the evidence adduced by the parties and duly appreciated by them and in

the right perspective.

The appeal accordingly fails and is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

May 14, 2015
Paritosh Kumar