

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

**Regular Second Appeal No.1461 of 2012 (O&M)
Date of Decision: December 05, 2015.**

Haroon

.....APPELLANT.

VERSUS

Kaley Khan

.....RESPONDENT.

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sarwan Singh, Senior Advocate for
Mr. N.S. Rapri, Advocate
for the appellant (s).

Mr. S.K. Bawa, Advocate
for the respondent.

SURINDER GUPTA, J.

This is regular second appeal against the judgment passed by Civil Judge (Junior Division), Ferozpur Jhirka, whereby suit filed by respondent-plaintiff Kaley Khan seeking relief of specific performance of the agreement to sell dated 08.08.2005 was decreed and the appellant-defendant was directed to execute the sale deed of land measuring 6 kanals 0 marlas situated within the revenue estate of village Kherla Kalan, Tehsil Ferozpur Jhirka, District Mewat, on receipt of balance sale consideration.

The case of the plaintiff, in brief, is that vide agreement dated 08.08.2005, defendant Haroon agreed to sell 6 kanals of land as fully described in the head note of the plaint for a sale consideration of ₹94,500/-

and received ₹40,000/- as earnest money. The date for execution and registration of the sale deed was agreed as 06.06.2006. The plaintiff has always been ready and willing to perform his part of the agreement and also appeared before the Sub Registrar, Ferozpur Jhirka on 06.06.2006 with balance sale consideration and other expenses but the defendant did not turn up.

The defendant contested and controverted the averments of plaintiff regarding the execution of the agreement inter-alia pleading that he was in need of money in the year 2005 and took a loan of ₹40,000/- from the plaintiff @ 1.5% per month with the condition that defendant would execute an agreement of his agricultural land in favour of plaintiff as security. It was also agreed that the agreement shall be returned on payment of loan amount. The deal was settled before Mam Chand and Farookh and the agreement was executed only to secure the loan amount. On 10.04.2006, the defendant returned the loan amount with interest in the presence of Farookh and Jamil but the plaintiff did not return the agreement. The other terms of the agreement like payment of balance sale consideration of ₹50,400/- were also denied and controverted.

Learned Civil Judge (Junior Division), Ferozpur Jhirka on appraisal of evidence discarded the plea of the defendant that the agreement was executed as security for return of the loan amount of ₹40,000/-. Mam Chand appeared as PW3 and supported the case of the plaintiff while Farookh was not examined. Defendant has also cited name of Jamil as witness of the return of money to the plaintiff but he has also not been examined.

The first Appellate Court affirmed the findings of the lower Court and dismissed the appeal filed by the defendant.

I have heard learned counsel for the parties and perused the lower Court record with their assistance.

Learned counsel for the appellant has argued that the witness examined by plaintiff namely Mam Chand PW3 has stated that in their village when someone takes loan, he either executes mortgage deed of his land or an agreement to sell as security for return of loan amount. This strengthens the plea taken by the appellant that he had also executed the agreement only as security for the loan taken by him from respondent-plaintiff. There is recital in the agreement that possession of the land was given while in fact the same is still with the plaintiff and if the possession of the land had already been given, the agreement was unregistered and inadmissible in evidence.

On giving a careful thought to the submissions of learned counsel for the appellant-defendant, I find that both the Courts below have already looked into and rightly discarded the same. It is not believable that a person is executing an agreement to sell his land as security for the return of loan but at the time of return of the loan he is not insisting on the cancellation of agreement or asking the creditor to return the same. The statement of Mam Chand PW3 nowhere indicate that the deal vide agreement dated 08.08.2005 was to secure the loan amount advanced by the plaintiff. The defendant had made reference to certain persons before whom such deal took place. In para 4 of the preliminary objection he has stated that at the time of execution of agreement, Mam Chand and Farookh son of Subhan

Khan were present and he has executed an agreement as security for borrowing loan amount in their presence. He also named Farookh and Jamil son of Yassin in whose presence, he returned the loan amount on 10.04.2006. Neither Farooq nor Jamil were examined by the appellant-defendant in support of his case. Mam Chand Lamberdar had rather supported the case of plaintiff. The mere fact that there is recital in the agreement about delivery of possession but the same was not delivered at the spot, in no manner, supports or corroborates the case of appellant-defendant. Such recitals are usually made in the agreement. This plea of the appellant that the agreement being not registered, is not admissible, is also not tenable. In case of ***Ram Kishan and another Vs. Bijender Mann alias Vijender Mann and others 2013(1) PLR 195***, Division Bench of this Court has held that a suit for specific performance based upon an unregistered agreement to sell which contained a clause regarding part performance of the contract by delivery of possession shall not be dismissed for want of registration of the contract/agreement or is barred under Section 17(1)(A) of the Registration Act.

On perusal of the judgments of the Courts below, I find no legal or factual infirmity therein, calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

December 05, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE