IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF PUNJAB AND HARYANA, AT CHANDIGARH

Regular Second Appeal No. 1869 of 2013 O&M)

Date of Decision: February 20, 2015

Dalip Singh ....Appellant

Versus

Ram Chander ....Respondent

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN.

Present: Mr. Mani Ram Verma, Advocate, for the appellant.

Mr. Sandeep Singhal, Advocate for the respondent.

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

Mahavir S. Chauhan, J.

Defeated defendant Dalip Singh (here-in-after referred to as 'the appellant') is in regular second appeal to challenge judgement/decree dated December 12, 2012 of the Court of learned District Judge, Rohtak (here-in-after referred to as 'the District Judge') affirming judgment and decree dated May 18, 2010 of the Court of learned Civil Judge (Junior Division), Rohtak (here-in-after referred to as 'the trial court') decreeing civil suit for possession of a plot describable as Ahata No. 02 measuring 150 square yards, shown in red colour in the site plan attached with the plaint, part of agricultural land as fully described in the heading of the plaint (here-in-after referred to as 'the suit property') by specific performance of agreement to sell dated September 25, 2003 (Exhibit P4) (here-in-after referred to as 'the agreement') statedly executed by appellant in favour of plaintiff Ram Chander (here-in-after referred to as 'the respondent').

Respondent's plea in the plaint:

02. As per case pleaded by the respondent, the appellant claiming himself to be owner of the suit property, executed an agreement on

September 25, 2003 to sell the suit property in his favour for a consideration of Rs.02,00,000/- only; received from the respondent the entire sale amount of Rs.02,00,000/-; delivered possession of the suit property to him along with original sale deeds No. 138/1 of April 06, 2000 and 4668/1 October 24, 1988 pertaining to the suit property; agreed to execute the necessary sale deed in his or his nominee's favour whenever asked to do so by him; but did not come forward for execution of the sale deed when called upon to do so by him in the month of September 2005 and instead filed a complaint against him, got his thumb-mark on an agreement to sell by force, took away the original sale deeds and after the complaint was found to false by the police, apologised before him but then filed a suit for permanent injunction. It was also averred by the respondent in the plaint that after possession of the suit property was delivered to him he constructed a house over the plot in question at a cost of Rs. 01,50,000/-, secured an electricity connection (though in appellant's name) and allowed the appellant to stay in the house as a care taker as execution of sale deed was kept in abeyance because he (the respondent) was running short of funds.

Appellant's defence in the written statement:

03. In the written statement, besides pleading preliminary objections regarding maintainability of the suit, respondent's locus standi, lack of cause of action concealment of material facts by the respondent, appellant came out with a plea that he never executed the agreement which, in fact, was outcome of fraud playedupon him by the respondent on the pretext of arranging house loan for him. It was also alleged by the appellant that he had borrowed from the respondent an amount of Rs. 73,000/-, had constructed the house over the plot in question out of that money, and had

repaid the loan amount together with interest (total Rs. 01, 02, 400/-).

Replication:

04. Respondent filed a replication to deny all what was said in the written statement and to re-assert his plea as put up in the plaint.

Proceedings before the trial Court:

05. In view of the diagonally opposing stands put forth by the parties, learned trial court entered into an inquisition into the controversy and to facilitate such an inquisition identified from the pleadings of the parties areas of discord in the form of following issues:

> 01. Whether the defendant had executed any agreement to sell the plot detailed in para No. 1 of the plaint in favour of plaintiff on 25.09.2003? OPP
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> 02. Whether sale consideration was paid by the plaintiff to the defendant?OPP
>
> 03. Whether the plaintiff was/is ready and willing to perform his part of contract? OPP
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> 04. Whether the plaintiff is entitled to the recovery, possession by way of specific performance of contract? OPP
>
> 05. Whether the plaintiff has no locus standi to file the present suit?OPD
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> 06. Whether the suit is not maintainable in the present form? OPD
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> 07. Whether the agreement dated 25.9.2003 is the result of fraud?OPD
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> 08. Whether the plaintiff has concealed material facts from the Court? OPD
>
> 09. Relief.

06. Both the sides adduced evidence in support of their respective pleas.

Suit decreed & Appeal dismissed:

07. After hearing learned counsel for the parties and on appraisal of the evidence, learned trial Court returned findings on issue Nos. 01 to 06 propitious to respondent's plea, on issue Nos. 07 & 08 hostile to the plea put up by the appellant and vide judgment/decree dated May 18, 2010 decreed respondent's suit with costs directing execution of necessary sale deed.

08. To assail the findings recorded by the learned trial Court, appellant preferred an appeal which, after contest, has been dismissed by the learned District Judge vide judgement/decree dated December 12, 2012 which is under challenge in the instant regular second appeal.

09. I have heard Mr. Mani Ram Verma, Advocate, for the appellant and Mr. Sandeep Singhal, Advocate for the respondent, besides perusing the record with their able assistance.

For and against the judgments/decrees of the Courts below:

10. Learned counsel for the appellant submits that respondent's very specific case being that possession of the suit property was also delivered to him simultaneously with execution of the agreement and entire sale consideration was paid by him to the appellant, the agreement amounts to conveyance of title in his favour and such an agreement is compulsorily regisetrable under Section 17 of the Registration Act, 1908 (for short 'the Registration Act'). Learned counsel also relies upon ***Omprakash versus Laxminarayan and others***, 2013(4) RCR(Civil) 747 to contend that in view of what has been stated hereinbefore, the agreement, in effect, amounts to conveyance of title in favour of the respondent and, as such, could not be admitted in evidence being insufficiently stamped.

11. *Per Contra*, learned counsel for the respondent submits that an

agreement is not a document conveying title and, as such, is not compulsorily registerable and no stamp duty is payable on it. Learned counsel buttresses his argument by referring to ***Jeet Singh versus Bahadar Singh***, 2010(1) Civil Court Cases 114 (P&H), ***State of Punjab versus Gurmail Singh***, 2003(2) Civil & Rent Judicial Reports 145, ***Darshan Singh versus Ram Singh***, 2009(1) Civil Court Cases 208(P&H), ***A.L.N. Narayan Chettiar & anr. Versus Official Assignee, High CourtRangoon & Anr.***, AIR 1941 *Privy Council 93, and* **Union of India versus M/s. *Chaturbhai M. Patel & Co.***, 1976 Current Law Journal (Civil) 166.

12. No other or further point has been urged on either side.

Findings in Regular Second Appeal:

13. In view of the submissions made at the bar, as noticed here-in-above, I assume that the parties to the lis do not dispute the factum of execution of the agreement and receipt of amount of Rs. 02,00,000/- by the appellant as sale consideration thereunder.

14. Though it has been strongly argued on behalf of the appellant that the agreement cannot be taken to be a document conveying title in his favour and it is literally true also but as is well said, there is no surer way to misread a document than to read it literally rather a document must be construed, taking into consideration the real intention of the parties. The substance, and not the form of a document, must be seen in order to determine its real purport. Intention of the parties is to be gathered from the document itself. Intention must primarily be gathered from the meaning of the words used in the document, except where it is alleged and proved that the document itself is a camouflage. If the terms of the document are not clear, the surrounding circumstances and the conduct of the parties have

also to be borne in mind for the purpose of ascertaining the real relationship between the parties. If a dispute arises between the very parties to the written instrument, then intention of the parties must be gathered from the document by reading the same as a whole (per ***Delta International Limited v. Shyam Sundar Ganeriwalla*, AIR 1999 SC 2607, approvingly cited in *Laxmibai (Dead) thr. Lrs. & Anr. v. Bhagwantbuva (Dead) thr. Lrs. & Ors.***, Civil Appeal No. 2058 of 2003 decided on January 29, 2013 (SC). Agreement, Exhibit P4, very clearly recites that after receipt of entire sale consideration appellant had delivered possession of the suit property to the respondent and in the plaint respondent has very clearly and emphatically stated that because he was short of funds (to meet the expenditure on execution and registration of the requisite sale deed), execution of sale deed was kept in abeyance, after taking possession of the suit property demolished the boundary wall that existed thereon, raised a house and allowed the appellant to live therein as its caretaker till a sale deed was executed. Respondent has reiterated this position while appearing as PW2 before the learned trial court also. From the recital in the agreement and conduct exhibited by the parties it is not difficult to infer that the document, Exhibit P4, though designated as an agreement but in effect is an instrument of conveyance because according to Section 2(10) of the Indian Stamp Act, 1899 (Stamp Act, for short) "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule 1". The agreement to sell, therefore, shall be deemed to be a conveyance and stamp duty is leviable on an instrument whereby possession has been transferred. Thus the agreement to sell in question is a conveyance within the meaning of Section 2(10) of the Stamp Act and is to be duly stamped. Section 35 of the Stamp Act makes instruments not duly stamped inadmissible in evidence, the relevant portion whereof reads as follows:

> "35. **Instruments not duly stamped inadmissible in evidence, etc.** - No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :
> Provided that -
> (a)any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;
> xxx xxx xxx."

15. From a plain reading of the aforesaid provision, it is evident that an authority to receive evidence shall not admit any instrument unless it is duly stamped. An instrument not duly stamped shall be admitted in evidence on payment of the duty with which the same is chargeable or in the case of an instrument insufficiently stamped, of the amount required to make up such duty together with penalty. As I have observed earlier, the agreement, Exhibit P4, having been insufficiently stamped, the same was inadmissible in evidence. The court being an authority to receive a document in evidence to give effect thereto, the agreement to sell with possession is an instrument which requires payment of the stamp duty applicable to a deed of conveyance. Duty as required, has not been paid and, hence, the trial court ought to have held the same to be inadmissible in evidence. This aspect, however, has escaped notice not only of the learned trial court but also the learned District Judge. The view which I have taken

finds support from the decisions of the Hon'ble Supreme Court in the case of ***Omprakash versus Laxminarayan and others***, 2013(4) RCR(Civil) 747 and ***Avinash Kumar Chauhan v. Vijay Krishna Mishra,*** 2009(1) R.C.R. (Civil) 615 : 2009(1) Recent Apex Judgments (R.A.J.) 297 : (2009)2 SCC 532**.** In ***Avinash Kumar Chauhan v. Vijay Krishna Mishra(supra)*** it has been held as follows :

> "21. It is not in dispute that the possession of the property had been delivered in favour of the appellant. He has, thus, been exercising some right in or over the land in question. We are not concerned with the enforcement of the said agreement. Although the same was not registered, but registration of the document has nothing to do with the validity thereof as provided for under the provisions of the Registration Act, 1908.
> 22. We have noticed heretobefore that Section 33 of the Act casts a statutory obligation on all the authorities to impound a document. The court being an authority to receive a document in evidence is bound to give effect thereto. The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. Adequate stamp duty admittedly was not paid. The court, therefore, was empowered to pass an order in terms of Section 35 of the Act."

Thus, the substantial question that has been raised by the learned counsel for the appellant is answered in his favour in the affirmative and it is held that the agreement to sell, Exhibit P4, being insufficiently stamped cannot be received in evidence in view of Section 35 of the Stamp Act.

16. There is another approach to the story. Section 54 of The Transfer of property Act, 1882 (here-in-after referred to as, 'the 1882 Act') defines "sale" as "a transfer of ownership in exchange for a price paid or promised or part paid and part promised". This Section further says that "Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument." Section 8 of

the 1882 Act defines transfer of property as passing on to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof. Section 17 of the Registration Act also makes compulsory registration of "other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immovable property" and "non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest". Section 49 of the Registration Act declares, "No document required by section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall affect any immovable property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered".

17. Respondent, undeniably, is in possession of the suit property in part performance of the agreement to sell, Exhibit P4, which has been made the basis of the suit for specific performance and is unregistered. Section 53-A of the 1882 Act empowers the transferee to resist any attempt on the part of the transferor to disturb transferee's lawful possession under the contract of sale in case of a suit being filed for seeking decree for specific performance on the basis of an agreement to sell in which the vendee is already in possession in part performance of the contract but according to Section 17(1A) of the Registration Act, the agreement shall have to be registered if it is executed on or after the commencement of the Registration and Other related laws (Amendment) Act, 2001 and if such documents are not registered, on or after

such commencement, then the agreement shall have no effect for the purposes of the said Section. In the present case, since the agreement to sell, Exhibit P4 came into existence on September 25, 2003, i.e. after the commencement of the Registration and Other related laws (Amendment) Act, 2001 and is unregistered, therefore, in view of Section 49 of the Registration Act this agreement could not be received as an evidence of any transaction affecting the property in question (per ***Gurbachan Singh Versus Raghubir Singh***, 2010(2) PLR 511). Thus, the substantial question that has been raised by the learned counsel for the appellant is answered in his favour in the affirmative and it is held that the agreement to sell being unregistered does not confer any right or title upon the plaintiff as the same cannot be received in evidence in view of Sections 17 (1A) and 49 of the Registration Act.

18. In view of all what has been said and discussed above, the appeal succeeds and is allowed. Judgement/decree dated December 12, 2012 of the Court of learned District Judge, Rohtak affirming judgment and decree dated May 18, 2010 of the Court of learned Civil Judge (Junior Division), Rohtak decreeing respondent's suit for possession by specific performance of agreement dated September 25, 2003, is set aside and reversed and respondent's suit is dimissed, leaving the parties to bear their own costs.

19. I am informed that sale deed has already been executed in execution of the decrees passed by the learned courts below. Such a sale deed shall not confer any right or title upon the respondent and shall be deemed to be non est. Stamp duty, if any, paid by the respondent shall be refunded to him as per procedure known to law and the appellant shall return to the respondent the amount of sale consideration (Rs. 02,00,000/-) together with interest @ 6% per annum from the date of execution of the agreement, Exhibit P4, i.e. September 25, 2003 till the day of repayment of the same.

20. As the main appeal has been disposed of pending miscellaneous applications, if any, are rendered infructuous and are disposed of accordingly.

[Mahavir S. Chauhan]
Judge

February 20, 2015
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