

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

RSA No.2445 of 2013 (O&M)

Date of decision: 28.04.2015

Sube Singh

.....Appellant

Versus

Suresh Kumar

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

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

Present: Mr. Jitender Nara, Advocate,
for the appellant.

Mr. Neeraj Kumar, Advocate,
for the respondent.

Ritu Bahri, J.

CM No.6646-C of 2013

For the reasons mentioned in the application, same is allowed and
delay of 56 days in refiling the appeal is condoned.

RSA No.2445 of 2013

Defendant-appellant has come up in regular second appeal against
the judgment dated 17.10.2012 passed by the Additional District Judge,
Rohtak, dismissing his appeal against the judgment and decree dated
10.11.2009 passed by the Civil Judge (Senior Division), Rohtak, whereby
suit filed by the plaintiff-respondent has been decreed.

Suresh Kumar-plaintiff (respondent herein) filed a suit for

possession against Sube Singh-defendant, stating therein that vide agreement to sell dated 03.07.2003, defendant-appellant had agreed to sell his land in his favour for a consideration of Rs.2,50,000/-. A sum of Rs.2,00,000/- was paid as earnest money. The sale deed was to be executed after clearing the loan amount on 03.07.2005. The remaining amount of Rs.50,000/- was to be paid up to 03.09.2003. However, on the request of defendant-appellant, the plaintiff-respondent had paid the remaining amount of Rs.50,000/- on 20.08.2003. Receipt in that respect was also executed by the defendant in the presence of the plaintiff and witnesses. On 01.07.2005 and 04.07.2005, the plaintiff appeared before the office of Sub Registrar, Rohtak as 02.07.2005 and 03.07.2005 were holidays and got his presence marked. On 03.08.2005, another agreement was executed by the defendant-appellant with the plaintiff, whereby date of execution of the sale deed was extended upto 31.01.2006. On that date, the plaintiff appeared before the Sub Registrar and got his presence marked as per affidavit dated 31.01.2006. But, the defendant-appellant had failed to execute sale deed in favour of the plaintiff.

Upon notice, defendant-appellant filed written statement and controverted the allegations levelled by the plaintiff-respondent in his suit.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the defendant entered into agreement dated 03.07.2003 of sale with plaintiff? OPP
2. Whether amount of Rs.2,00,000/- and amount of Rs.50,000/- were paid by plaintiff as earnest money to the defendant on dated 03.07.2003 and 28.03.2003? OPP
3. Whether the possession of the land, subject matter of agreement

was handed over by defendant to the plaintiff? OPP

4. Whether the plaintiff was and is ready to perform his part of contract? OPP
5. If all the above mentioned issues are proved, whether plaintiff is entitled for decree of specific performance along with decree of possession? OPP
6. Whether the plaintiff has no cause of action to file and maintain the present suit? OPD
7. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
8. Whether the suit of the plaintiff is not maintainable in its present form? OPD
9. Relief.

The trial Court, after going through the evidence led by the parties, came to a conclusion that as per terms of the agreement to sell dated 03.07.2003 (Ex.P6), the possession was handed over the plaintiff, entry regarding which was reflected in Girdawari, Ex.P17 and Ex.PX. The defendant, after executing agreements, Ex.P6 and Ex.P1, had received the total sale consideration of Rs.2,50,000/- from the plaintiff. With these observations, the trial Court decreed the suit of the plaintiff for specific performance of the agreement to sell. The lower appellate Court affirmed the findings recorded by the trial Court and dismissed the appeal.

The argument of the present appellant (defendant) that in spite of decreeing the suit for specific performance, the plaintiff-respondent could recover double the amount of Rs.2,50,000/- i.e. Rs.5,00,000/- as per agreement dated 03.08.2005 (Ex.P1), has been rightly rejected by the lower

Court in **Kapoor Singh and others Vs. Surinder Singh and others**, 1993 Civil Court Cases 375 (P&H), wherein it was held that mere mentioning in the agreement of sum to be paid in case of default is no ground for denying specific performance of the agreement and the object of mentioning of damages in agreement was only to secure the performance of such agreement.

In the facts of the present case, the execution of two agreements dated 03.07.2003 (Ex.P6) and 03.08.2005 (Ex.P1) is not in dispute and both these agreements are to be read jointly. The defendant-appellant, after accepting the entire sale consideration, gave possession of the suit land to the plaintiff-respondent and it was thereafter, he failed to execute the sale deed by not appearing before the Sub Registrar. In these circumstances, the judgments passed by both the Courts below do not require any interference.

Learned counsel for the appellant has argued that the agreement in question was not a registered document, therefore, as per the judgment passed by this Court in **Gurbachan Singh Vs. Raghubir Singh**, 2010 (2) Punjab Law Reporter 511, suit for specific performance should have been dismissed.

The judgment given in **Gurbachan Singh's** case (supra) has been overruled by a Division Bench of this Court in **Ram Kishan and another Vs. Bijender Mann alias Vijender Mann and others**, 2013 (1) PLR 195, wherein it was held as under:-

“12. A suit for specific performance based upon an unregistered agreement to sell accompanied by delivery of possession or executed in favour of a person who is already in possession, cannot, therefore, be said to be barred by Section 17 (1A) of the Registration Act, 1908.

13. Section 17 (1A) merely declares that such an unregistered contract shall not be pressed into service for the purpose of Section 53 (A) of the Transfer of Property Act, 1882. Section 17 (1A) of the Registration Act, 1908, does not,

whether in specific terms or by necessary intent, prohibit the filing of a suit for specific performance based upon an unregistered agreement to sell, that records delivery of possession or is executed in favour of a person to whom possession is delivered and the proviso to Section 49 of the Indian Registration Act, 1908 put paid to any argument to the contrary.”

In view of the judgment passed by a Division Bench of this Court in **Ram Kishan's** case (supra), the judgments passed by the Courts below does not require any interference, as no illegality, much less perversity, has been found therein.

No substantial question of law arises for consideration.

Dismissed.

28.04.2015
ajp

(RITU BAHRI)
JUDGE