

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

RSA No.1051 of 2015 (O&M)

Date of Decision.03.12.2015

Om Parkash son of Sh. Gainda Ram

.....Appellant

Vs.

Ram Kishan

.....Respondent

Present: Mr. Himanshu Sharma, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. The defendant is the appellant. The plaintiff's suit was for specific performance of the agreement under the terms of which the defendant had put the plaintiff in possession of the property. The legal submission which had been taken before the Court below and which were rejected were that the document made a recital of delivery of possession and it requires registration under the provisions of Section 17(1A) of the Registration Act. Further it was not duly stamped as it was required to be done. The Court below has stated that the objection regarding the non-registration or stamp as being insufficiently made had not been taken at the trial and therefore, the defendant was barred.

2. The law is not correctly set forth although the court had come to the correct conclusion in the ultimate analysis. There is no compulsion for the plaintiff suing for specific performance of agreement which contains a recital for delivery of possession to have it registered. The compulsion for registration obtains under Act 48 of 2001 only if the

plaintiff was seeking for a protection of his possession and seeks to take the benefit under Section 53A of the Transfer of Property Act. If the plaintiff was not seeking for injunction or any relief in relation to the property for protection of his possession and if the plaintiff was suing only for the specific performance, there is no compulsion for invoking Section 53-A or taking the bar under Section 17(1A) of the Registration Act.

3. The objection that the document has not been duly stamped is also of no merit. The Haryana Amendment of the Stamp Act does not cast any additional duty for payment of stamp other than ₹2.50 as necessary for the agreement. Section 17(2)(v) states clearly that if the document is not put for use under Section 53A for which Section 17(1A) can be invoked then such a document that only entitles a person to obtain yet another document does not require to be registered.

4. If it were to be contended that the objection regarding insufficiency of stamp could be taken at any time, the plea is erroneous, for Section 36 of the Stamp Act constitutes a bar for an objection regarding insufficiency of stamp or document being unstamped to be taken up any time after the document is admitted in evidence. The objection which was omitted to be taken must be taken as waived.

5. The decision decreeing the suit was perfectly in order and the appeal filed by the defendant before the Appellate Court was correctly dismissed. There is no merit in the second appeal. The second appeal is dismissed as devoid of merit.

(K. KANNAN)
JUDGE

December 03, 2015
Pankaj*