

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

RSA No. 1492 of 2015 (O&M)

Date of decision: 19.10.2015

Birender Singh

... Appellant

versus

Surajbhan

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ram Darshan Yadav, Advocate, for the appellant.

Mr. Sandeep Kumar Yadav, Advocate,
for the caveator/respondent.

K.Kannan, J.

CM No. 13362-C-2015

CM is allowed.

Appeal is restored to file.

Main Case

The appeal is at the instance of the defendant who has suffered a decree for specific performance obtained by the plaintiff on an agreement executed on 14.09.2007 for a consideration of Rs. 14,00,000/- after receiving an amount of Rs. 7, 17, 500/- as advance on the date of execution of the agreement. The document recited that the property was put in possession of the purchaser on the same day and it stipulated that

the balance of sale consideration was required to be paid before 14.08.2008 and a sale deed secured on stamp papers purchased by the plaintiff. The plaintiff's grievance was that he was ready and willing to perform his part of the contract but the defendant was evasive requiring him to institute a suit for specific performance. It was contended in defence *inter alia* that the document that made the recital of delivery of possession was required to be registered and having not been registered it could not be enforced. It was also the contention that the defendant was a small farmer having only about 21 kanals and if he had to sell the property of 15 kanals he will be left with hardly any property to cultivate and make living. He was selling the property only on account of his indebtedness and it would constitute great hardship for he was compelled to execute the sale deed. He should be relieved of the obligation to sell and only a decree for return of money could be passed. The courts below rejected the contention in defence and finding the truth of the agreement as established and the readiness and willingness as also having been proved, granted the decree. The Appellate Court confirmed the same.

Learned counsel presents to me two points which I have referred to above, namely, non-registration of the agreement and the extreme hardship that will be caused if the defendant were to be compelled to execute the sale. The requirement of registration as pleaded by the counsel is not legally tenable. An agreement of sale in relation to immovable property does not require registration and specifically excepted under Section 17 of the Registration Act. The requirement of

registration is required in the case where a person who is in possession in part performance of the agreement seeks the protection of the Court from debarring a transferee or his transferee from interfering with possession by an enforcement of a right as guaranteed under Section 53-A of the Transfer of Property Act, which alone would require the document to be registered. If it is not registered it is nonetheless enforceable for the relief of specific performance and the agreement cannot fail in for such enforcement. The legal plea taken as regards enforceability is rejected as not tenable. The hardship of the defendant that can come in the way and enable the party to secure the discretion to be exercised in favour of the defendant shall be the hardship that should be determined with reference to the circumstances existing at the time of the contract. The compelling circumstances that necessitated the defendant to enter into an agreement when he was only interested in securing cash for a purpose other than with an intent to sell, must be a matter specifically brought at the time of trial and established. This issue has been dealt with and well-considered by the Courts below with reference to a judgment of the Hon'ble Supreme Court and I do not feel constrained to repeat the same.

I do not think there is any error committed by the two Courts below for interference. The regular second appeal is dismissed.

(K.KANNAN)
JUDGE

19.10.2015

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