

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

RSA No.4233 of 2015 (O&M)

Date of Decision.09.12.2015

Banwari Lal

.....Appellant

Vs.

Lal Chand

.....Respondent

Present: Mr. Sanjay Mittal, Advocate
for the appellant.

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. Delay 1085 days in filing the appeal is condoned.
2. The defendant is the appellant challenging the decree for specific performance granted to the plaintiff. The Court of 1st Instance had granted only the relief of recovery of the advance paid under the agreement but the relief for specific performance was granted in appeal. The objection taken in the second appeal which is filed after nearly three years is that the agreement was not enforceable for non-registration since the document contained recital of delivery of possession and it was required to be registered under the provisions of Section 53-A of the Transfer of Property Act read with Section 17(IA) of the Registration Act. It is the further contention that ad valorem court fee had to be paid on the consideration for suit for specific performance and the decree and memo of costs at the Appellate Court show that a fixed court fee of ₹200/- was paid.

3. I will find none of these objections to be substantial questions. One, it is wrong to assume that an agreement which makes a recital of delivery of possession is required to be registered under the provisions of the Act. There is no such requirement in law under the Registration Act itself. On the other hand, Section 53-A of the Transfer of Property Act which has stood amended by introduction of Act 48 of 2001 only requires that for a person who claims part performance and seeks protection of his possession against the vendor or a subsequent alienee, the document cannot be used for part performance unless the document was registered. Only to secure suitable remedy under Section 53-A, the document requires the registration but enforcement of the document to secure specific performance, the document itself does not not require a registration. Clause 1A of Section 17 of the Registration Act also states that the document which is put to use in the manner in which Section 53-A requires, such a document would require registration. We are not confronted with the situation of the plaintiff suing for injunction to protect his possession against the vendor or his alienee. The provisions of Section 17(1A) of the Registration Act also does not operate. This point has been considered and set at length by reference to several judgments of High Court in the judgment of this Court in Kamal Singh Vs. Rajinder Kumar in C.R. No.5564 of 2014.

4. The issue relating to court fee is not a matter that will be brought in appeal on stand alone basis if the other point of law which was taken has been consigned as not requiring any fresh consideration in the light of the previous decisions rendered by this Court and in the light of the express provisions of the respective enactments of Transfer of

Property Act and the Registration Act. The payment of court fee is invariably a matter between the court and the suitor and it will have a relevance only for the purpose of collection of state revenue and for ensuring the forum of appeal if there is any pecuniary limit for a jurisdiction to be exercised by the Court. Within the State of Punjab and Haryana, Courts are of unlimited jurisdiction from the Junior Division upwards and if the Court fee is not paid, it will be for the State to make a proper audit and for the Court to issue a check slip and assess the court fee. That will not be a matter for adjudication in the second appeal at the stage of admission.

5. There is no merit in the second appeal. It is dismissed as devoid of merit.

(K. KANNAN)
JUDGE

December 09, 2015
Pankaj*