

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8216 of 2013

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1. MD. ANZAR S/OLATE WALI MOHAMMAD R/O VILLAGE- RATANPURA, P.S. MORO, DISTRICT- DARBHANGA THROUGH MD. QAMRUZZAMA, S/O LATE WALI MOHAMMAD, R/O VILLAGE- RATANPURA, P.S. MORO, DISTRICT- DARBHANGA HOLDING POWER OF ATTORNEY

.... PETITIONER/S

VERSUS

1. MD. MANZAR ALI @ KALI S/O LATE ZAINUL ABEDIN R/O VILLAGE- RATANPURA, P.S. MORO, DISTRICT- DARBHANGA, THROUGH MD. MAZHAR ALI @ GORE, S/O LATE ZAINUL ABEDIN, R/O VILLAGE- RATANPURA, P.S.- MORO, DISTRICT- DARBHANGA HOLDING POWER OF ATTORNEY

.... RESPONDENT/S

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Appearance :

For the Petitioner/s	:	Mr. Sukumar Sinha-Sr. Advocate Mr. Abinash Kumar-Advocate
For the Respondent/s	:	Mr. Najmul Hoda-Advocate Mr. Md. Ataul Haque-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

04 09-05-2016

Heard learned counsel for the petitioner as well as learned counsel for the respondent.

2. Petitioner is the defendant. A suit for Specific Performance of Contract Act has been filed at the end of the respondent/ plaintiff wherein after appearance of defendant/ petitioner, a petition has been filed on his behalf before the learned lower Court in terms of Order-VII, Rule-11 of the C.P.C. asking for rejection of the plaint in the background of presence of Section 17(1-A) of the Registration Act stating that the document purported to be in support of activities governed under Section 53(A) of the T. P. Act, requires registration. As the present suit has been filed on the basis of alleged unregistered deed of

agreement, hence no suit under banner of Section 53(A) of the T. P. Act (Part Performance) is permissible, whereupon plaint is fit to be rejected.

3. The learned lower Court after hearing both the parties has rejected the prayer by the order impugned. Hence this petition.

4. In order to substantiate his plea, the learned counsel for the petitioner has submitted that after amendment of the Section 17 of the Registration Act, Section 17 (1-A) has been introduced in order to put safeguard upon the interest of the proposed transferor from being duped, impersonated, cheated, deceived and further, for that purpose registration of the document has been made compulsorily. Once, there happens to be intention of the legislature to have the act performed in particular way in order to justify or accrual of a particular right, then in that event, that act is to be exercised in same manner to achieve such right and so, the document unless and until being registered one, would not give any substantive or legal right to the plaintiff to draw a suit for Specific Performance of Contract. Further, in order to substantiate such plea, relied upon *Ashok Goenka vs. Chandra Bhushan Singh and Others reported in 2010(1) P.L.J.R. 317 as well as Gurbachan Singh v. Raghubir Singh reported in A.I.R.*

2010 Punjab and Haryana 77. So, submitted that the order impugned passed by the learned lower Court happens to be bad and is accordingly, fit to be set aside.

5. Per contra, it has been submitted on behalf of learned counsel for the respondent that in terms of Section 53(A) of the T. P. Act, the transferor is found duly forbidden to raise such plea and on account thereof, he is precluded in getting any sort of relief in terms of Section 17(1-A) of the Registration Act.

6. Before adjudicating upon the order impugned, certain factual events is to be taken note of. There happens to be no controversy with regard to the admitted status of the land under dispute to be mortgaged property and for that, plaintiff happens to be the mortgagee while the petitioner/ defendant happens to be the mortgagor. The land was given in possession of respondent/ plaintiff and so, basically it happens to be an usufructuary mortgage. As the petitioner/ defendant was unable to pay the mortgaged amount on account thereof, both the parties entered into negotiation, which was finalized on a particular consideration amount and in token thereof, deed of agreement was prepared and as, the petitioner/ defendant failed to execute the sale deed within the stipulated period, attracted institution of the instant suit under the banner of Specific Relief Act.

7. In the aforesaid factual aspect, now the relevant law having applicability over the aforesaid dispute is to be taken note of.

8. The first one happens to be the T. P. Act relating to transfer of the immovable property. Section 5 of the T.P. Act defines the transfer of property:-

5. "Transfer of property" defined.- In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, [Inserted by Act 20 of 1929, S.6] and one or more other living persons; and "to transfer property" is to perform such act.

Inserted by Act 20 of 1929, S.6 [In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]

9. The second important Section is Section 53(A) of the T.P. Act:-

"Inserted by Act 20 of 1929, S.16 [53A. Part

performance-53A. Part performance Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

10. And the third one is the sale in terms of Section

54 of the T. P. Act:-

"54. "Sale" defined "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made: Such transfer, in the case of tangible immovable 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.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale: *A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.*

It does not, of itself, create any interest in or charge on such property."

11. Now, comes to the another event and that happens to be Section 17 of the Registration Act whereunder document so enlisted therein have been identified to be properly registered for the purpose of its due acknowledgement. For better appreciation Section 17 is quoted below:-

"17. Documents of which registration is compulsory:-

(1) The following documents shall be registered. if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866 (XX of 1866) or the Registration Act, 1871 (VIII of 1871) or the Indian Registration Act, 1877 (III of 1877) or this Act came or comes into force, namely:-

(a) instruments of gift of immoveable property;

(b) other non-testamentary instruments which purport or operate, 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;

(c) 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; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent; The Registration Act 1908 6

(e) non -testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates 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:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub - section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rent reserved by which do not exceed fifty rupees.

(f) agreement relating to the Deposit of title deeds, where such deposit has been made by way of security for the repayment of a loan or an existing or future debts ;

(g) sale certificate issued by any competent officer or authority under any recovery Act ;

(h) irrevocable Power of Attorney relating to transfer of immovable property in any way, executed on or after the commencement of the Registration (Maharashtra Amendment) Act, 2010.

(I-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of property Act, 1882 shall be registered if they have been 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, they shall have no effect for the purposes of the said section 53A.

(2) Nothing in clauses (b) and (c) of sub - section (1) applies to – :

(i) any composition - deed; or

(ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the

assets of such Company consists in whole or in part of immovable property; or

(iii) any debenture issued by any such Company, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder of the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property, or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) any document "any document other than the documents specified in sub-section (1-A)" not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards, to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding ; or

(vii) any grant of immovable property by the State Government ;or

(viii) any instrument of partition made by a Revenue - officer; or

(ix) any order granting a loan or Instrument of collateral security granted under the Land Improvement Act, 1871, (XXV of 1871) or the Land Improvement Loans Act, 1883 (XIX of 1883); or The Registration Act 1908 7

(x) any order granting a loan under the Agriculturists Loan Act, 1884 (XII of 1884) or under the Bombay Non –Agriculturists Loans Act 1928, or instrument for securing the repayment of a loan made under either of those Acts; or

(x-a) any order made under the Charitable Endowments Act, 1890 (VI of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting such Treasurer of any property; or **The state amendment w.e.f. 1/4/2013.***

(xi) any endorsement on a mortgage - deed

acknowledging the payment of the whole or any part of the mortgage - money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue officer.

[Explanation:- A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest - money or of the whole or any part of the purchase money.]

(3) Authorities to adopt a son, executed after the first day of January 1872 and not conferred by a will shall be registered.

12. Section 49 of the Registration Act, which has got pivotal role in deciding the issue is also to be taken note of and is quoted below:-

“49. Effect of non-registration of documents required to be registered.—No document required by section 17 Added by Act 21 of 1929, S. 10. [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered:

Added by Act 21 of 1929, S. 10. [Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance

*under Chapter II of the Specific Relief Act, 1877 (3 of 1877) Now see the Specific Relief Act, 1963, The words “or as evidence of part performance of a contract for the purposes of section 53-A of the Transfer of Property Act, 1882” omitted by Act 48 of 2001, S. 6 (w.e.f. 24.09.2001).[***] or as evidence of any collateral transaction not required to be effected by registered instrument.] State Amendment Uttar Pradesh: In section 49,—*

(i) in the first paragraph, after the words “or by any provision of the Transfer of Property Act, 1882” insert the words “or of any other law for the time being in force”,

(ii) substitute clause (b) as under: “(b) confer any power or create any right or relationship, or”,

(iii) in clause (c), after the words “such power”, insert the words “or creating such right or relationship”,

(iv) in the proviso, omit the words “as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or”. [Vide Uttar Pradesh Act 57 of 1976, sec. 34 (w.e.f. 1-1-1977)].”

13. At the present moment, another act, Specific Relief Act 1963 is also to be looked into. As per Section 10 of the Specific Relief Act, the following criteria have been perceived wherein Specific Performance of Contract is found enforceable for better appreciation, the same is quoted below:-

”10. Cases in which specific performance of contract enforceable.—Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced—

(a) when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or

(b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief. Explanation.—Unless and until the contrary is proved, the court shall presume—

(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and

(ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases:—

(a) where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;

(b) where the property is held by the defendant as the agent or trustee of the plaintiff.” *****

“12. Specific performance of part of contract.—

(1) Except as otherwise hereinafter provided in this section the court shall not direct the specific performance of a part of a contract.

(2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed by only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—

(a) forms a considerable part of the whole,

though admitting of compensation in money; or (b) does not admit of compensation in money, he is not entitled to obtain a decree for specific performance; but the court may, at the suit of other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party—

(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and a case falling under clause (b), I[pays or had paid] the consideration for the whole of the contract without any abatement; and

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

(4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part. Explanation.—For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject matter existing at the date of the contract has ceased to exist at the time of its performance.”

14. The status of the plaintiff is found duly acknowledgeable under Section 15 of the Act. Sections 20, 21 and 22 are the relevant provisions guiding the power of the Court and

for better appreciation those Sections are quoted below:-

“20. Discretion as to decreeing specific performance.—

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:—

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.
Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b). Explanation 2.— The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases

where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.

21. Power to award compensation in certain cases.—

(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.

(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract

Act, 1872 (9 of 1872).

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint: Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation. Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.

22. Power to grant relief for possession, partition, refund of earnest money, etc.—

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or 1[made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed: Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief

under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.”

15. Furthermore, one another enactment, the Indian Contract Act is also to be taken note of at the present moment. As per Section 10 of the Act, following agreement have been identified as a contract:-

“10. What agreements are contracts.—All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. —All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.” Nothing herein contained shall affect any law in force in 1[India], and not hereby expressly repealed, by which any contract is required to be made in writing 2or in the presence of witnesses, or any law relating to the registration of documents.”

16. After parallel scrutiny of those relevant Sections as indicated above, it is evident that there happens to be specific requirement in terms of Section 54 of the T.P. Act to have registration of document for the purpose of effectuating sale having the consideration amount more than Rs.100. Side by side, it is apparent from Section 54 of the T. P. Act itself, that



agreement to sell does not create any interest in or charge on such property. When no interest in terms of agreement for sale is found duly acknowledgeable, then in that event, registration is not all found necessary, and that happens to be reason behind that neither under Section 53(A) nor under Section 54 of the T.P. Act, amendment has been made in consonance with the amendment having been made under Registration Act whereunder under Section 17, Sub-section (1-A) has been introduced.

17. Now, there should be parallel scrutiny of Section 17(1-A) as well as Section 49 of the Registration Act. As per Section 17(1-A) of the Registration Act, it has been mandated that the document relating to contracts to transfer for consideration any immovable property, is to be registered, and if not registered, its effect relating to part performance as envisaged under Section 53(A) of the T.P. Act would be worthless. However, if it is taken together with proviso of Section 49 of the Registration Act, it is evident that the unregistered deed of contract is found admissible with regard to the suit having filed in accordance of Specific Relief Act. That means to say, some sort of demarcation is found in terms of Section 53(A) of the T.P. Act, as well as Specific Relief Act. So, it has become crystal clear from the aforesaid analysis that gust of Section 53(A) of the T.P. Act is an event



which visualizes before execution of sale as per Section 54 of the T. P. Act while desirability of application of Specific Relief of Contract Act is to coerce the party through process of the Court to follow up the terms so agreed amongst them under the banner of lawful contract. And that happens to be reason behind having presence of proviso of Section 49 of the Registration Act.

18. Part performance is an event preceding sale whereunder delivery of possession is given and the incidence of delivery of possession is only accountable, in case, the document is registered while specific performance of contract is an outcome of an agreement having arrived in between the parties whereunder one could bring a suit for performance in terms of contract arrived in between the parties and for that purpose, handing over possession of immovable property is not a condition precedent. So, from analytical approach of the relevant law, it is evident that handing over the property in pursuance of agreement will be considered only on the basis of having the document registered, while for the purpose of launching a suit under Specific Performance of Contract, no such barrier is found in terms of Proviso 49 of the Registration Act. Therefore, both have got two distinct identity and commands two different sphere. Furthermore, be ascertained after due adjudication.

19. In *Suraj Lamp and Industries Private Limited (2) through Director vs. State of Haryana and another reported in (2012) 1 SCC 656*, it has been held:-

“16. Section 54 of TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in Narandas Karsondas v. S.A. Kamtam and Anr. (1977) 3 SCC 247, observed:

“32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. See Rambaran Prosad v. Ram Mohit Hazra [1967]1 SCR 293. The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.”

33. In India, the word 'transfer' is defined with reference to the word 'convey'. The word 'conveys' in section 5 of Transfer of Property Act is used in the wider sense of conveying ownership.

37. ...that only on execution of conveyance ownership passes from one party to another...."

17. In *Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra* [2004 (8) SCC 614] this Court held:

"10. Protection provided under Section 53A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party."

18. It is thus clear that a transfer of



immoveable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immoveable property can be transferred.

19. *Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53-A of TP Act). According to TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter."*

20. The facts of the decision so relied upon by the learned counsel for the petitioner as reported in **2010(1) P.L.J.R. 317**, it is evident that the same was under Order 39 and 1 and 2 read with Section 151 of the C.P.C. relating to Title Suit No.24 of



2003 as well as Title Suit No.19 of 2003 and in the aforesaid background, though the suit were filed asking for directing the defendant to execute sale deed after receiving the due consideration amount and in the aforesaid background, the theme of applicability of injunction was considered and further, in casual manner, the proprietary of the document in question in terms of Section 17 (1-A) of the Registration Act was taken note of. Furthermore, the aforesaid exercise was taken up in the background of argument advanced on behalf of learned counsel for the appellant that the suit was in terms of Section 53(A) of the T. P. Act.

21. In *A.I.R. 2010 Punjab and Haryana 77*, the aforesaid suit was for the purpose of Specific Performance of Contract wherein after appearance of defendant, plea was taken up on the ground of fraud having been played and for that, separate suit was filed and both the suits were clubbed together and then, was decided against which an appeal was filed. After going through the judgment, it is evident that though at an initial stage, the Court had perceived the suit to be that of Specific Performance of Contract, but during course of discussion, the finding was recorded treating the suit to be under Section 53(A) of the T.P. Act and so, applicability of Section 17(1-A) has been perceived.

22. As held, both two, that means to say, plea under Section 53(A) of the T. P. Act as well as a suit under Specific Performance of Contract Act has got independent identity and for that proper adjudication is required. That being so, it happens to be premature to infer at the present moment that instant suit happens to be under Section 53(A) of the T.P. Act, therefore, has got some sort of bezel of Section 17 (1-A) of the Registration Act.

23. In the background of aforesaid observation, instant petition is disposed of.

(Aditya Kumar Trivedi, J)

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