

206

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

**RSA-4015-2011 (O&M)
Date of decision : 29.02.2016**

Kamaljit Singh Sandhu and another

...Appellants

Versus

Rakesh Malhotra and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dhull, Advocate
for the appellants.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. B.S. Mittal, Advocate
for respondent No.1.

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?

AMIT RAWAL, J. (ORAL)

The appellants-defendants in the present regular second appeal are against the judgment and decree of the lower Appellate Court, whereby the claim of respondent-plaintiff seeking declaration in the alternative for possession with consequential relief of permanent injunction, in respect of plot bearing No.336 (old) 548 (new), measuring 420 square meters i.e. 502.13 square yards situated at Block -B, in the residential colony known as Sushant Lok, Gurgaon has been decreed and the sale deed dated 28.01.2002 executed

by defendant No.1 in favour of defendant Nos.2 and 3 has been held to be illegal, null and void and decree of possession has also been ordered in favour of the respondent-plaintiff.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Abhishek Dhull, learned counsel for appellant-defendant, submits that the case set up by the respondent-plaintiff in the plaint was that by virtue of the document i.e. agreement to sell dated 20.04.1987, the respondent-plaintiff had acquired the right and ownership of the aforementioned property and as the aforementioned document reflected that the entire amount of sale consideration had been paid, the suit for declaration was not maintainable as similar document more than ₹ 100/- required registration and therefore, while dismissing the suit, the document i.e. agreement to sell has rightly been discarded by the trial Court, much less, could not be exhibited as per Section 35 of the Indian Stamp Act, 1899. He further submits that as per the ratio decidendi culled by the Hon'ble Supreme Court rendered in **"Suraj Lamp and Industries Pvt. Ltd. V/s State of Haryana and another" 2011 (4) RCR (Civil) 669**, no immovable property can be legally transferred or conveyed through a General Power of Attorney. The possession of the property remained with the defendant No.1-Devki Nandan Gupta, who vide sale deed dated 28.01.2002 sold to the appellant-defendant Nos.2 and 3, whereas, the suit has been filed on 21.09.2004. The lower Appellate Court reversed the findings of the trial Court by holding that the search report was got conducted on 23.01.2002, but the sale deed is dated 28.01.2002, whereas on perusal of the same, it is of 23.11.2001. Be that as it may, the aforementioned agreement to sell does not confer the title and the suit seeking performance of the agreement to sell was required to be filed within a

reasonable time and not for declaration and permanent injunction that too after the expiry of 17 years and two years of alleged cause of action. He submits that at the final stage of the suit, an application under Order 6 Rule 17 CPC seeking amendment in the plaint and claiming the specific performance of the agreement to sell, much less, sought the possession, which was dismissed by the trial Court vide order dated 17.08.2010 and the said order has attained the finality, much less, such finding has not been challenged by taking the aid of the provisions of Order 43 Rule 1-A of the Code of Civil Procedure. He further refers to the cross-examination of the plaintiff that for all 17 years, wherein it has surfaced that he did not go to the office of M/s Ansal Plaza, for issuance of the sale deed/conveyance deed, much less, gave any intimation with regard to the agreement to sell, aforementioned. Defendant No.1- Devki Nandan Gupta in the year 1994 collected the sale deed of the plot from M/s Ansal Plaza and thus, submits that the finding rendered by the lower Appellate Court while reversing the well-reasoned judgment and decree of the trial Court, whereby suit had been dismissed, is liable to be set aside and urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal, accordingly, the following substantial questions of law arises for determination:

1. Whether the impugned judgment and decree of the lower Appellate Court is in consonance with Sections 33 and 35 of the Indian Stamp Act, 1899 or not?.
2. Whether the impugned judgments have been passed on conjectures and surmises, thus, perverse and liable to be set aside?
3. Whether the judgment and decree passed by the lower Appellate Court is against the provisions of Registration

Act?

Mr. Kanwaljit Singh, learned Senior Counsel assisted by Mr. B.S. Mittal, appearing on behalf of respondent No.1 submits that after the payment of the consideration noticed in the agreement, the entire payment was paid by the respondent-plaintiff. Even the address in the sale deed vide which, the appellant-defendant No.2 had acquired the right, title and ownership of the aforementioned property, is of the defendant No.1-Devki Nandan Gupta son of Shri Babu Ram Gupta, C/o Rakesh Malhotra son of late Shri K.C. Malhotra. The appellants cannot be *bona fide* purchasers, much less, cannot take the benefit of the provisions of Section 41 of the Transfer of Property Act,, as they were aware of the factum of the agreement to sell. It was a complete sale, which is recognizable under Section 202 of the Indian Contract Act and therefore, the ratio decidendi culled out by the Hon'ble Supreme Court in **Suraj Lamp and Industries Pvt. Ltd.'s case** (supra) shall not apply. Through the receipts, the payment of entire balance amount has been proved on record, as come from the custody of respondent-plaintiff, thus, an irresistible conclusion is liable to be drawn that the agreement was a complete sale and therefore, the appellants-defendants cannot take the benefit of non-registration and payment of stamp duty, much less, there cannot be any perversity in the judgment and decree of the lower Appellate Court and the same does not suffer any illegality and perversity and no substantial question of law arises for determination. He further submits that M/s Ansal Plaza had also given a certificate that plot bearing No.336 was old one and new number was given as 548, therefore, there cannot be any dispute with regard to the identification.

I have heard the learned counsel for the parties and appraised the

paper-book and of the view that there is a merit in the submissions of Mr. Arun Jain, for, the suit for declaration claiming the consequential relief of possession and injunction, in my view, was not maintainable, the remedy, if any, for the respondent-plaintiff was to seek the specific performance, in view of the ratio decidendi culled out in the judgment of Hon'ble Supreme Court rendered in *Suraj Lamp and Industries Pvt. Ltd.'s case* (supra), thus, the trial Court rightly treated the document as agreement to sell. Assuming for an argument sake that it was a sale deed, the same could not be admitted into evidence for lack of registration rather, in my view, as per the provisions of Section 33 of the Indian Stamp Act, 1899, was liable to be confiscated, much less, not admissible in evidence as per the provisions of Section 35 of the Act. In my view, the respondent-plaintiff miserably failed to discharge the onus, much less, prove the case as stated to have been pleaded, in essence, even if, Devki Nandan Gupta had relinquished his right in the property, the remedy, if any, was to seek the specific performance and not to claim declaration by invoking the provisions of Section 34 of the Specific Relief Act. It is unexpected for a person, who has purchased the plot, would remain silent for a period of 17 years and would not seek vindication of his right, as he was not put into the possession of the same. Even, after the agreement dated 20.04.1987, the original sale deed was also taken by the Devki Nandan Gupta in the year 1994.

In view of what has been noticed above, the judgment and decree of lower Appellate Court is hereby set aside and the suit, accordingly, fails. The substantial questions of law noticed above are answered in favour of the appellants-defendants and against the respondent-plaintiff and the decree of the trial Court is restored, whereby the respondent-plaintiff has been entitled to

recover the money along with interest @ 9% from the date of the payment till realization.

With the aforesaid observations, the appeal is allowed.

29.02.2016
yogesh

(AMIT RAWAL)
JUDGE