

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2318 of 2012 (O&M)

Date of Decision: December 14, 2016

Nirmal Singh & others

...Appellants

Versus

Kewal Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Avinash Chander Jain, Advocate &
Mr.Chetan Bansal, Advocate,
for the petitioner.

Mr.Sudeep Mahajan, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-defendants are aggrieved of the concurrent findings of fact and law, whereby the suit seeking specific performance of the agreement to sell dated 19.4.2005 in respect of land measuring 7 kanals 7 marlas agreed to be sold for a total sale consideration of ₹3,90,500/-, has been decreed.

Mr.Avinash Chander Jain and Mr.Chetan Bansal, learned counsel representing the appellant-defendants submit that the case set up by the respondent-plaintiff was that on the agreed date, i.e., 26.4.2005, vendor Pal Singh had appeared before the office of Sub Registrar for execution and registration of the sale deed and even the draft sale deed was presented, but he slipped away and accordingly, the respondent-plaintiff filed the suit for permanent injunction on 27.4.2005. The present suit seeking specific performance is of 24.4.2006 and, thus, was hit by the provisions of Order 2

Rule 2 CPC. The Courts below have erroneously held the suit being maintainable as the breach, according to the respondent-plaintiff, had occurred on 27.4.2005. No explanation has come forward for not filing the suit on 19.4.2005. It was an agreement to sell, but the sale deed required registration as per the provisions of Section 49 of the Registration Act, 1908. All these factors have not been taken care of by the Courts below and, thus, the judgments and decrees are not sustainable.

Per contra, Mr.Sudeep Mahajan, learned counsel for the respondent-plaintiff submits that the entire sale consideration was paid. The execution of the agreement to sell has been proved as Pal Singh had admitted the same, but came out with different voice and excuse. In fact, he denied the receipt of the money and stand taken was that the money was to be paid before the Sub Registrar. The witnesses to the agreement to sell have belied his stand. Since he ran away from the office of the Sub Registrar and gave a threat of dealing with the property, it necessitated filing of the suit for injunction on 27.4.2005. The notice of the said suit was served on 28.4.2005 and the injunction was granted on 16.5.2005, but before that the sale deed dated 2.5.2005 was effected, thus, it was hit by doctrine akin to lis pendens. It is in this backdrop of the matter, the relief under the provisions of Specific Relief Act, 1963 had been sought, thus, the provisions of Order 2 Rule 2 CPC would not apply as the respondent-plaintiff was within his right to protect the property. The agreement to sell as per the proviso to Section 49 of the Registration Act for the purpose of specific relief does not require registration. All these factors have been taken care of, thus, there is no illegality and perversity in the findings under challenge.

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

paper book and of the view that there is no force and merit in the submissions of Mr.Jain as the provisions of Order 2 Rule 2 CPC would not come into play keeping in view the facts narrated above, for, it is a matter of record that on 19.4.2005, Pal Singh had though appeared in the office of the Sub Registrar, but thereafter slipped away on some pretext and started openly threatening for dealing with the property and it is in this backdrop of the matter, the respondent-plaintiff was left with no other option but to file the suit and the apprehension surfaced owing to the sale deed executed on 2.5.2005, thus, the suit had been filed thereafter seeking specific performance of the agreement to sell. If there was some truth in the stand of vendor Pal Singh, he would have been candid enough to face the wrath of cross-examination. In fact, he did not come forward to appear in the witness box. As per the amendment caused to the proviso, agreement to sell does not require registration. In fact, the documents, if seen, the parties had intended to register the sale deed and the draft on the valid stamp paper was prepared, but for the reasons aforementioned, vendor Pal Singh did not come forward. Having not denied the agreement to sell and parted with the property is nothing but an attempt to dislodge and disentitle the respondent-plaintiff from claiming the relief and create equities. Appellant Nos.1 to 4 have not been able to prove the ingredients of Section 41 of the Transfer of Property Act. It has not come in the evidence that before buying the property, they have made reasonable enquiry, much less were not aware of the aforementioned agreement to sell. The gap between the dates is a material factor that it was a distress sale as the vendor wanted to get rid of the liability. All these factors have been taken care of.

For the foregoing reasons, I do not intend to differ with the

concurrent findings rendered by the Courts below, which are based on appreciation of oral and documentary evidence. No case for interference is made out.

Appeal stands dismissed.

This will not preclude the appellants from claiming relief in accordance with law for damages or otherwise.

December 14, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No