

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

RSA No.4138 of 2012 (O&M)

Date of decision:05.09.2016

Rajwanti and others

... Appellants

Vs.

Sarla Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Dr. Parveen Hans, Advocate
for the appellants.

Mr. Rose Gupta, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

Appellant-plaintiffs are aggrieved of declining relief of declaration and specific performance of the oral agreement to sell dated 01.05.1971 and as well as, prohibitory injunction restraining the respondent-defendant to interfere in their peaceful possession over the disputed property.

Dr. Parveen Hans, learned counsel appearing on behalf of the appellant-plaintiffs submits that respondent-defendant had entered into an oral agreement to sell dated 01.05.1971 and the entire agreed sale consideration of Rs.10,500/- had been paid. She did not contest the case and thus, proceeded against ex parte. The payment of earnest money, much less, the execution of the aforesaid agreement to sell has been proved. The

documentary evidence placed on record Ex.P9 shows that appellant-plaintiffs had also been put in possession. Time was not essence of the agreement. There was breach of contract, accordingly, the suit aforementioned was filed. The Courts below have erroneously not appreciated the legal aspect and as well as the oral and documentary evidence and thus, urges this Court for granting of relief as aforementioned.

Per contra, Mr. Rose Gupta, learned counsel appearing on behalf of the respondent-defendant submits that plaintiffs have failed to prove on record the oral agreement, much less, the payment of earnest money of Rs.10,500/-. If at all Rapat Roznamcha Ex.P9 was in favour of the plaintiffs, nothing prevented them to seek specific performance, thus, they cannot take the benefit of provisions of Article 54 of Limitation Act and thus, prays for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that as regards declaration and specific performance is concerned, the plaintiffs have miserably failed to prove the execution of agreement, much less, its breach . Ex.P9 – Rapat Roznamcha is of 1990 reflecting their possession, whereas, suit has been filed on 18.10.2006. In my view, the plaintiffs have failed to prove the execution of the oral agreement to sell, much less, the payment of earnest money, rightly so, the Courts below have rightly declined the declaration.

As regards the prohibitory injunction, i.e., vis-a-vis forcible

interference, I am of the view that Ex.P9 – Rapat Roznamcha is the document which shows that the plaintiffs had been put in possession. The document, i.e., khasra girdawari, which is of 2009 itself is a sufficient document to show the possession. If at all, the defendant is aggrieved, he can seek possession in accordance with law but not forcibly and illegally. In this view of the matter, the Courts below ought to have granted the injunction.

For the foregoing reasons, I am of the view that suit of the appellant-plaintiffs is partly decreed to the extent respondent-defendant or her agents etc. are restrained from taking forcible interference and dispossession from the land in dispute except in due course of law. Vis-a-vis finding qua non granting of declaration is hereby upheld.

Accordingly, the appeal stands partly allowed. Decree sheet be prepared.

(AMIT RAWAL)
JUDGE

September 05, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No