

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

**RSA-4292-2013 (O&M)
Date of decision : 15.09.2016**

Santu

... Appellant

Versus

Ram Partap

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Chauhan, Advocate
for the appellant.

Mr. S.K. Panwar, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit for possession by way of specific performance of agreement to sell dated 29.06.2005, has been decreed by both the Courts below.

Mr. S.K. Chauhan, learned counsel appearing on behalf of the appellant-defendant with lot of vehemence and eloquence raised the argument that the agreement to sell required registration. The lower Appellate Court had earlier allowed the appeal and dismissed the suit on this ground, but this Court in regular second appeal remanded back the matter to the lower Appellate Court. There are no reasons assigned from differing with the judgment rendered by the lower Appellate Court in the earlier round of the litigation. The categoric stand of the appellant-defendant in the written statement was that he had taken the loan and the

said papers have been misused. All these factors escaped the notice of both the Courts below, in fact, the respondent-plaintiff has failed to prove the readiness and willingness, much less, whether the parties had actually intended to enter into an agreement to sell or was a loan transaction. All these factors have not been taken into consideration by both the Courts below, thus, urges this Court for setting aside the judgment and decree under challenge.

Mr. Sunil. K. Panwar, learned counsel appearing on behalf of the respondent-plaintiff submits that agreement to sell, aforementioned, has been proved to the hilt through the testimony of the attesting witnesses and the scribe. The agreement to sell does not require registration as per the proviso to Section 49 of the Registration Act, 1908 (hereinafter called 'the 1908 Act'), thus, urges this Court for dismissal of the appeal by affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that as per the proviso to Section 49 of the 1908 Act, the agreement to sell does not require registration. For the sake of brevity, the proviso to Section 49 of the 1908 Act reads thus:-

49. *Effect of non-registration of documents required to be registered.—*

XXX

XXX

XXX

[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) or as evidence of any collateral transaction not required to be effected by registered instrument.]

The suit was preceded by a legal notice. If at all, the document was a loan transaction and had purportedly been misused, nothing prevented the appellant-defendant to initiate the proceedings in accordance with law, in fact, he was afraid of same as boomeranging. The appellant-defendant has also failed to disprove the signatures through direct and cogent reasons, much less, corroborative. Had it been a loan transaction, perhaps certain amount would have been paid to the respondent-plaintiff, however, no such evidence, in this regard, has seen the light of the day. On the contrary, the agreement to sell dated 29.06.2005 has been proved through the testimony of the scribe and the attesting witnesses, who withstood wrath of cross-examination. The Courts below have rightly exercised the discretion under Section 20 of the Specific Relief Act, 1963 as the respondent-plaintiff has been found to be always readiness and willingness, much less, there is a compliance of the provisions of Section 16(c) of the 1963 Act.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeal is dismissed.

15.09.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No