

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2582 of 2016 (O&M)
Date of Decision: September 22nd, 2016

Rashid Mohammad

...Appellant

Versus

Nirmal Singh & others

...Respondents

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

Present: Mr.Anil Shukla, Advocate,
for the appellant.

AMIT RAWAL, J.

Appellant-plaintiff, defendant in the counter claim, is aggrieved of the dismissal of the suit seeking specific performance of the agreement to sell dated 19.12.2002 allegedly executed by Nirmal Singh-defendant No.1 regarding land measuring 6-2/3 marlas, situated within the revenue estate of Village Dhaul Kalan, Tehsil Payal, District Ludhiana and consequential relief of permanent injunction restraining the defendants from dispossessing the plaintiff and decreeing the counter claim for mandatory injunction for handing over possession of the suit property.

Mr.Anil Shukla, learned counsel for the appellant-plaintiff submits that the suit, aforementioned, was filed on the premise that previously Dasandi @ Saidan entered into an agreement to sell dated 4.1.1975 with Malkiat Singh and Darshan Singh. Dasandi was mother of respondent Nos.7 to 15. As per the terms and condition of the agreement to sell, aforementioned, possession of the property was handed over. Darshan Singh and Malkiat Singh executed agreement to sell dated 11.6.1976 in favour of Albali Mohd. Son of Noor Baksh, father of defendant Nos.2 to 4

and after his death, respondent Nos.2 to 4 become the owner of the property, who further executed the agreement to sell dated 12.6.2001 in favour of respondent No.1, who further entered into an agreement to sell with the plaintiff on 19.12.2002 and received total sale consideration of ₹70,000/-. Possession accordingly was handed over to the appellant-plaintiff, who raised the construction and started living in the house. Both the Courts below have failed to notice the fact that though the agreement to sell was not registered, but the possession has been handed over to the appellant-plaintiff after accepting the full consideration. Appellant-plaintiff is entitled to protection under Section 53-A of the Transfer of Property Act. Respondent-defendants filed the suit which had been decreed and, therefore, two appeals were filed.

If the agreement to sell is not proved on record, the possession of the defendants in the counter claim was continuous, notorious and open to the knowledge of the entire world, much less, the respondents, therefore, said mandatory injunction could not be sought.

Both the courts below have non-suited the appellant on the ground that agreement to sell in question was not registered and, thus, the same has no value in the eyes of law. The original owner died. L.Rs of Dasandi have filed an application seeking execution of the counter claim and, thus, urges this Court for formulating the substantial questions of law and setting of the concurrent findings.

I have heard the learned counsel for the appellant-plaintiff, appraised the paper book and of the view that the aforementioned agreements to sell have not seen the light of the day. It has not been ascertained whether the aforementioned agreements to sell contained

assignment clause or not, in essence where the vendees in those agreements to sell had the power to further enter into agreement to sell. In the absence of the same, the appellant cannot seek suit for specific performance. The appellant-plaintiff has failed to prove the agreement to sell as it is stated to have been witnessed by two witnesses, in essence none of the witness has been examined, therefore, he could not claim the earnest money of ₹70,000/-.

The appellant has not been able to prove the ingredients of adverse possession, therefore, rightly so, the discretion under Section 20 of the Specific Relief Act has been declined. Vis-a-vis the possession, agreement to sell does not confer any title. Once the agreement to sell has not been proved, appellant cannot take the benefit of provisions of Section 53-A of the Transfer of Property Act and rightly so, the counter claim has been decreed. The concurrent findings cannot be interfered with unless and until there is gross illegality, which has not been made out. But the finding of the Court below qua agreement to sell is not sustainable, in view of the provisions of Section 49 of the Registration Act, thus, hereby expunged.

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

Appeal stands dismissed.

September 22nd, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No