

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

R.S.A No.723 of 2016 (O&M)

Date of decision :05.10.2016

Kuldeep Singh

..... Appellant

Versus

Smt. Ram Pyari and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.P.K.Hooda, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 09.12.2015 passed by the learned Additional District Judge, Hisar, vide which the appeal filed by the appellant-plaintiff against the judgment and decree dated 05.10.2011 passed by the learned Additional Civil Judge (Sr. Division), Hisar, has been dismissed.

2. Appellant-plaintiff has filed the suit for declaration to the effect that he is absolute owner in possession of the house constructed over the plot measuring 0 Kanal 6 Marlas comprised in Khasra no. 67//13/1/2(5-12) i.e. 6/112 share situated at Adampur, Tehsil Adampur, District Hisar on the basis of agreement to sell dated 15.12.2003.

3. As per averments in the plaint, defendants no. 1 to 9 were the owners in possession of the aforesaid plot. They entered into an

agreement to sell dated 15.12.2003 in favour of the plaintiff for the sale of the aforesaid plot for a sale consideration One lac. The whole of the sale consideration was paid by the plaintiff on the same day in the presence of the witnesses. The entire terms and conditions were enshrined in the agreement to sell dated 15.12.2003. Defendants have agreed to get the sale deed executed and registered in favour of the plaintiff or his nominee. Defendants have also agreed that the plot in question would not be mortgaged or transferred in any manner and in case of default, they would be liable to face the action for the offence punishable under Section 420 of the Indian Penal Code. It is further pleaded that the plaintiff has raised the construction in the aforesaid plot as he was delivered the possession thereof on payment of the entire sale consideration. The plaintiff is legally entitled to get the sale deed executed and registered. Hence the suit.

4. Defendants-respondents contested the suit on the grounds *inter alia* that in fact the house in question was in existence for the last many years and was agreed to be sold to the plaintiff for a sum of Rs. 3 lacs. The whole of the sale price was to be paid at the time of registration of the sale deed. On 15.12.2003, defendants came to the premises of the office of the Sub-Registrar for registration of the sale deed. But, plaintiff in collusion with Rajinder Mohan, the petition writer committed fraud and got prepared the alleged agreement to sell without the consent of the defendants. No payment was made to them at the time of execution of the said agreement and the special power of attorney. The construction over the plot in dispute was raised by the father of the defendants long back.

5. Defendant no. 11-Smt. Birma Devi filed the separate written statement, wherein she pleaded that defendants no. 1 to 9 had sold the plot and the house constructed thereupon to defendant no.10-Subhash Chander vide registered sale deed dated 23.08.2007 and delivered the possession to him, who in terms further sold the same to her vide registered sale deed dated 29.07.2008 for a sale consideration of Rs. 1, 32,000/-. Defendant no. 11 further pleaded that she is a *bona fide* purchaser and was not having any notice of the so called agreement to sell dated 15.12.2003. With these pleas defendants-respondents, who had appeared to contest the suit, pleaded for dismissal of the suit.

6. It is pertinent to mention that the suit qua defendants no. 4 to 9 was dismissed by the learned trial Court vide order dated 01.09.2007.

7. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 08.08.2008:-

1. Whether the plaintiff is absolute owner in possession of house constructed over plot measuring 0 Kanal 6 Marlas as per mutation of inheritance No. 2847 of Adampur, as per jamabandi for the year 2002-03 on the basis of agreement dated 15.12.2003 and plaintiff is entitled to get the sale deed executed and registered in his favour from defendant?OPP.
2. Whether the suit of the plaintiff is not maintainable?OPD
3. Whether the suit is bad for non joinder and mis joinder of necessary parties?OPD
4. Whether the plaintiff is estopped by his own act and conduct?OPD
5. Whether the plaintiff has not come to the Court with clean hands?OPD
6. Whether the suit of the plaintiff is not properly valued?OPD
7. Relief.

8. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit vide impugned judgment and decree dated 05.10.2011.

9. Aggrieved with the aforesaid judgment and decree,

appellant-plaintiff preferred the appeal. The same was also dismissed by the learned Additional District Judge, Hisar, vide impugned judgment and decree dated 09.12.2015. Hence this Regular Second Appeal.

10. I have heard Mr. P.K.Hooda, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

11. Initiating the arguments, learned counsel for the appellant contended that the plaintiff has become the owner in possession of the house in dispute by dint of the agreement to sell dated 15.12.2003 executed by defendants no. 1 to 9 in his favour. The entire sale consideration of Rs. 1 lac was paid on the day of execution of the agreement to sell itself. He further contended that the sale deeds executed by defendants no. 1 to 9 in favour of defendant no.10 and defendant no.10 in favour of defendant no.11 are illegal and are hit by principle of *lis pendense*. The said sale deeds are liable to be set aside.

12. I have duly considered the aforesaid contentions.

13. It is pertinent to mention that the suit filed by the appellant-plaintiff was dismissed qua defendants no. 4 to 9 under Order 9 Rule 2 Code of Civil Procedure, 1908 vide order dated 01.09.2007. The application for restoration of the suit against them was filed after three years and nine months, which was also dismissed by the learned trial Court. Thus, the said order has attained finality. Moreover, learned counsel for the appellant has not been able to point out any legal infirmity in the said order passed by the learned trial Court.

14. The plea raised by the appellant-plaintiff that he has purchased the plot and thereafter raised the construction was also negated

from the material on record. It was found by the learned Courts below on appreciation of the evidence that the said house was constructed 20-22 years ago and even the electric connection was existing therein. The plaintiff cannot produce any documentary evidence on record to show that the construction over the plot in question was raised by him. Even, the report of the Local Commission has negated the plea raised by the appellant-plaintiff.

15. The case of the plaintiff was materially contradictory with respect to the payment of the sale consideration and the place of execution of the agreement, which renders the agreement itself doubtful. Moreover, the suit filed by the appellant-plaintiff is itself not maintainable. He has filed the suit for declaration and injunction. He is claiming himself to be the owner of the suit property on the basis of the agreement to sell dated 15.12.2003. The Hon'ble Apex Court in case **Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and another 2011(4) R.C.R. (Civil) 669** has laid down as under:-

“11. Section 54 of TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in *Narandas Karsondas v. S.A. Kamtam and Anr.* (1977) 3 SCC 247, observed:

A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. See *Rambaran Prosad v. Ram Mohit Hazra* [1967] 1 SCR 293. The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.”

In India, the word 'transfer' is defined with reference to the word 'convey'. The word 'conveys' in section 5 of Transfer of

Property Act is used in the wider sense of conveying ownership... ..that only on execution of conveyance ownership passes from one party to another...."

In *Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra* [2004 (8) SCC 614] this Court held:

"Protection provided under Section 53A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party."

It is thus clear that a transfer of immoveable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immoveable property can be transferred.

12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53A of TP Act). According to TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter."

In view of the aforesaid ratio of law laid down by the Hon'ble Apex Court, the agreement to sell dated 15.12.2003 will not confer any right, title or interest to the appellant-plaintiff qua the suit property. The only remedy available to the plaintiff was to file the suit for specific performance of agreement to sell dated 15.12.2003, which he did not avail.

16. Thus, in view of my aforesaid discussion, I do not find any legal infirmity or perversity in the concurrent findings recorded by the learned Courts below.

17. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

18. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

October 05, 2016
s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No