

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

**RSA No.1408 of 2017 (O&M)
Date of Decision: July 31, 2017**

Vikas Gupta

... Appellant

Versus

Pannu Ram

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Raj Kumar Gupta, Advocate,
for the Appellant.

ANIL KSHETARPAL, J.

Defendant has filed this Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff – respondent had filed a suit for specific performance of agreement/transfer deed dated 29.12.2006. Plaintiff had also prayed for grant of decree of permanent injunction restraining the defendant and his agents, employees and servants from interfering in the peaceful possession of the property.

Plaintiff claimed that defendant was owner of plot measuring 680 sq. yds. Defendant had entered into an agreement-cum-transfer deed with the plaintiff and the entire sale consideration was paid and possession was delivered to him under the agreement to sell. It was further pleaded that the plaintiff along with one Balwinder Singh had sold Plot No.95 measuring 173 sq. yds. vide sale deed dated 28.12.2006 to the defendant.

Defendant appeared and asserted that agreement/transfer deed

dated 29.12.2006 is, in fact, forged and fabricated document. Defendant admitted execution of sale deed dated 28.12.2006 by the plaintiff in favour of defendant. Defendant, however, denied all remaining assertions made in the plaint.

Plaintiff with a view to prove agreement/transfer deed dated 29.12.2006 appeared in the witness box as PW1 and examined Kuldeep Singh PW2, Heera Lal PW3, Balbir Singh PW4, Harjit Singh PW5 and Varun Gagneja PW6. Kuldeep Singh is one of the attesting witnesses of agreement/transfer deed. Shri Varun Gagneja, Handwriting and Fingerprint Expert compared the signatures of defendant Vikas Gupta.

Learned trial Court after appreciating the evidence available on the record, decreed the suit filed by the plaintiff.

Appeal was preferred by the defendant. Learned first Appellate Court after reappreciating the evidence available on the file, dismissed the appeal filed by the defendant-appellant.

Learned counsel for the appellant has submitted the following points: –

- (i) Since Pannu Ram along with Balwinder Singh had executed a sale deed in favour of defendant with respect to land measuring 173 sq. yds., therefore, plaintiff alone could not have filed the suit.
- (ii) The agreement/transfer deed was in fact an exchange, which was required to be compulsorily registered and, therefore, document was not admissible in evidence.
- (iii) The report of Handwriting and Fingerprint Expert cannot

be relied upon as he had only compared the photocopy.

(iv) No opportunity was granted to the defendant to lead evidence after framing additional issue on 18.12.2014.

I have heard learned counsel for the appellant at length and with his help, gone through the judgements and records of the Courts below.

First argument of learned counsel for the appellant is that once the plaintiff along with one Balwinder Singh had executed the sale deed with respect to Plot No.95 measuring 173 sq. yds., then the plaintiff alone could not have filed the suit. I am afraid the argument is wholly without any substance. From the look at the agreement to sell/transfer deed, it is clear that defendant agreed to sell plot measuring 680 sq. yds. to the plaintiff alone. Once the agreement was between Pannu Ram and Vikas Gupta, Balwinder Singh was not required to be impleaded as party in the present suit seeking specific performance of an agreement to sell. Sale of Plot No.95 measuring 173 sq. yds. was an independent transaction. That transaction has already been completed because the sale deed has already been executed by the plaintiff along with Balwinder Singh in favour of defendant – appellant. Therefore, there is no substance in the aforesaid argument.

Learned counsel for the appellant has further submitted that since reading of agreement shows that it is an exchange deed/transfer deed, therefore, it is required to be registered. Plaintiff had filed suit for specific performance of an agreement. No doubt in the agreement it has been written that possession has been exchanged and entire sale consideration has been received, but that itself does not mean that such a document is a transfer deed or exchange deed. Intention of the parties was clear that appellant –

defendant shall sell plot measuring 680 sq. yds. to the plaintiff – respondent. Agreement to sell is not required to be registered for filing a suit for specific performance of agreement. Division Bench of the High Court in the judgement reported as 2013(2) CCC 188, titled *Ram Kishan and another Vs. Bijender Mann alias Vijender Mann and others*, has held that for filing a suit for specific performance, registration of agreement to sell is not necessary even if the possession has been delivered under the agreement to sell. The registration of agreement is necessary if agreement holder is seeking protection under Section 53A of the Transfer of Property Act.

Learned counsel for the appellant has further submitted that report of the expert is not admissible in evidence. In this respect, it may be noticed that the agreement dated 29.12.2006 was proved by direct evidence. The attesting witness had supported the document. Plaintiff had also appeared in the witness box and supported his case. In this situation, report of Handwriting and Fingerprint Expert would not be of much relevance.

Learned counsel for the appellant has at last argued that the appellant-defendant has not been given an opportunity to lead evidence after additional issue was framed on 18.12.2014.

I have gone through the grounds of appeal. The appellant did not take up any such ground before the first Appellate Court. I have also gone through the judgement passed by the learned first Appellate Court. This point was not pressed during the course of arguments before the first Appellate Court. I have seen the order dated 13.02.2015 passed by the Civil Judge (Junior Division), Ludhiana when the additional issue was framed. The additional issue was to the following effect: –

“1A. Whether the defendant executed and entered into an agreement dated 29.12.2016 in favour of the plaintiff? OPP”

The onus was on the plaintiff. Counsel for the plaintiff had made a statement at Bar that he does not want to lead evidence. In fact, Issue No.1A was only framed by the Court as a precautionary measure. Otherwise, Issue No.1 was already framed by the Court with respect to agreement/transfer deed dated 29.12.2006. Parties had led their evidence conscious of the fact that validity of agreement/transfer deed is an pivotal issue between the parties. Plaintiff and defendant were given opportunity to prove their case. The suit remained pending before the trial Court for almost seven years.

Taking into consideration the facts available on the file, I do not find any ground to interfere in the Regular Second Appeal. The appellant has not been able to point out any substantial question of law involved in the present appeal. Appellant has further failed to bring forth any point falling within the scope of Section 41 of the Punjab Courts Act, 1918.

In view of the above, the present appeal is ordered to be dismissed.

(ANIL KSHETARPAL)
JUDGE

31.07.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No