

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

Regular Second Appeal No. 4638 of 2012(O&M)

Date of Decision: December 13 , 2018.

Kuldeep Singh

..... APPELLANT (s)

Versus

Jarnail Singh and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sanjiv Gupta, Advocate
for the appellant.

None for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The appellant/plaintiff is aggrieved of judgment and decree dated 08.08.2012 passed by the learned Additional District Judge, Sirsa whereby judgment and decree dated 26.05.2010 passed by the learned Additional Civil Judge(Senior Division), Dabwali has been modified.

Brief facts necessary for adjudication of the case are that, the plaintiff/appellant filed a suit for possession by way of specific performance of agreement to sell dated 21.01.2006 (Ex.P2) executed by the defendant/respondents in his favour for sale of land measuring 8 marlas as

detailed in the plaint for a total consideration of ₹73,000/-. It was pleaded that a sum of ₹20,000/- was accepted as earnest money by the defendants. Possession of the land in question was handed over to the plaintiff and it was decided that the sale-deed in favour of the plaintiff would be executed on 20.01.2007. However, 20.01.2007 and 21.01.2007 were holidays (being Saturday and Sunday) and further, till 29.01.2007 there being holidays on certain days or days not fixed for registration of the sale-deed, plaintiff appeared in the Tehsil Complex, Kalanwali on 30.01.2007. Defendants did not come forward for execution and registration of the sale-deed, whereas the plaintiff was ready and willing to perform his part of the agreement. The defendants started interfering in his possession over the suit land. Hence, suit was filed.

Defendants contested the suit. Preliminary objections were raised. Averments on merit were controverted. It was stated that ownership over the suit land was admitted by the defendants, but it was denied that agreement to sell dated 21.01.2006 was ever executed in favour of the plaintiff by them. The said agreement was claimed to be a false and fabricated document, procured by the plaintiff in connivance with the witnesses. It was stated that there was a dispute between one Suraj Jindal and the defendants. The plaintiff in his bid to help the defendants, obtained their signatures on various papers fraudulently and later converted them into valuable security in the shape of alleged agreement. There was no reason to sell their land for a meagre amount. Dismissal of the suit was prayed for. Replication was filed.

From pleadings of the parties, the following issues were framed by the learned trial court:-

1. Whether the defendants had entered into an agreement to sell dated 21.01.2006 to sell the suit land for a lawful consideration of Rs.73,000/- to the plaintiff and received a sum of Rs.20,000/- as earnest money? OPP
2. Whether the plaintiff is always ready and willing to perform his part of contract? OPP
3. If both these issues are proved in affirmative, whether the plaintiff is entitled to the decree for specific performance of agreement to sell? OPP
4. Whether the plaintiff is entitled to injunction as prayed for? OPP
5. Whether the suit of plaintiff is not maintainable? OPD
6. Relief.

Evidence was led by both the parties in support of their respective claims.

Learned trial court on appreciation of the facts and evidence on record concluded that the plaintiff has successfully proved the execution of the agreement to sell dated 21.01.2006. It was also held that the plaintiff was ready and willing to carry out his part of the contract and possession of the land in question was indeed delivered to the plaintiff. Accordingly, suit filed by the plaintiff was decreed.

Appeal was preferred by the respondents/defendants. Learned Additional District Judge, Sirsa vide judgment and decree dated 08.08.2012 held that though plaintiff has proved agreement dated 21.01.2006 and as the said agreement was not a registered document and possession having been delivered, decree of specific performance could not be granted in favour of the plaintiff. The respondents/defendants were directed to refund the earnest money of ₹20,000/- alongwith interest at the rate of 18% per annum from the date of execution of the agreement i.e., 21.01.2006 till realization. Aggrieved therefrom, the present appeal has been filed by the plaintiff.

Learned counsel for the appellant relies upon decision dated 12.10.2012 of the Division Bench of this Court in RSA No.4946 of 2011 (Ram Kishan and another v. Bijender Mann @ Vijender Mann and others) to argue that the appellant/plaintiff can not be denied relief of specific performance merely on the ground that agreement to sell was not a registered document. It is thus prayed that this appeal be allowed and modification as carried out by the learned Additional District Judge, Sirsa in the judgment and decree dated 26.05.2010 passed by the learned Additional Civil Judge(Senior Division), Dabwali be set aside and suit filed by the plaintiff/appellant be decreed in terms of the judgment and decree dated 26.05.2010.

It is noticed that none has been appearing on behalf of the respondents since May 2014, despite service. There is no justification for adjourning the matter, which was listed for arguments as way back as on 06.01.2015.

I have heard learned counsel for the appellant and have perused the record with his assistance.

There is no dispute that both the learned courts below have returned concurrent finding that agreement to sell dated 21.01.2006 (Ex.P2) was validly and legally executed by the respondents/defendants favour of the appellant/plaintiff. The appellant has led clear and cogent evidence to prove the execution of the said document. The defendants failed to prove that the agreement to sell (Ex.P2) is a forged or fraudulent one. There is a specific reference to the contradiction in the written statement filed by the defendants and evidence led by them which is to the effect that their signatures were taken on blank papers. It is

specifically held by the learned trial court that defendant No.3 is a post-graduate and he alongwith his wife are school teachers. Therefore, it is not acceptable or believable that they would have appended their signatures/thumb impressions on judicial stamp papers solely for the purpose of moving a representation. Delivery of possession of the property in question is also not in dispute.

Learned Additional District Judge, Sirsa declined the relief of specific performance of the agreement to sell on the ground that as possession of the property in question was delivered to the plaintiff/appellant, registration of the said instrument was mandatory which was admittedly not carried out. Division Bench of this Court in Ram Kishan's case (supra) was seized of the matter regarding effect of non-registration of a document in such a situation. Specific reference made before the Division Bench reads as under:

“However, since there is a conflict regarding the legal position as to whether the suit for specific performance can be decreed on the basis of unregistered agreement to sell in view of Section 17(1A) of the Registration Act, 1908 and the other provisions referred to above, if the plaintiff claim to be in possession in part performance of the agreement. Therefore, it would be appropriate, if the matter is referred to the Division Bench to decide the said issue of law.”

After a detailed discussion, it was held by the Division Bench that:-

- “(a) A suit for specific performance, based upon an unregistered contract/agreement to sell that contains a clause recording part performance of the contract by delivery of possession or has been executed with a person, who is already in possession shall not be dismissed for want of registration of the contract/agreement;
- (b) the proviso to Section 49 of the Registration Act, legitimises

such a contract to the extent that, even though unregistered, it can form the basis of a suit for specific performance and be led into evidence as proof of the agreement or part performance of a contract.”

Keeping in view the facts and circumstances as above, it is clear that the learned Additional District Judge, Sirsa has clearly erred in declining relief of specific performance to the appellant. Modification carried out by the learned First Appellate Court vide judgment and decree dated 08.08.2012 to this effect is accordingly set aside. Consequently, judgment and decree dated 26.05.2010 passed by the learned Additional Civil Judge (Senior Division), Dabwali is upheld.

Appeal is accordingly allowed.

December 13 , 2018.
'om'

(**LISA GILL**)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No