

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

**R.S.A No.2266 of 2016(O&M)
Date of decision :28.08.2018**

Surinder Kumar

..... Appellant

Versus

Sham Pal through his legal representative Kailasho Devi

..... Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sarju Puri, Advocate
for the applicant-appellant.

LISA GILL,J

Appellant-plaintiff is aggrieved of judgement and decree dated 20.02.2014 as well as judgement and decree dated 12.08.2015, passed by the learned Additional Civil Judge (Sr. Division), Balachaur and learned Additional District Judge, Shaheed Bhagat Singh Nagar. Suit filed by the appellant stands dismissed.

Brief facts necessary for the adjudication of the case are that the appellant-plaintiff filed a suit for specific performance of agreement to sell dated 25.11.2003 entered into by him with the defendant-respondent along with consequential relief of permanent injunction or in the alternative, relief for recovery was sought. Respondent-defendant was pleaded to be the owner in possession of the residential house in dispute

as detailed in the plaint. Agreement to sell dated 25.11.2003 was executed between the parties for a total sale consideration of ₹2 lakhs. ₹1,70,000/- was received by the respondent as earnest money. It was agreed that the sale deed in question would be registered on or before 24.11.2006 i.e. after about three years. The plaintiff, it was pleaded remained ready and willing to execute the sale deed. He came present in the Tehsil Complex, Balachaur on the stipulated date i.e. 24.11.2006, but the respondent-defendant did not turn up. Appellant got his presence marked through affidavit dated 24.11.2006 (Ex.P-2). Despite requests, sale deed was not executed. Hence the present suit was filed.

Respondent-defendant resisted the suit. Written statement taking various preliminary objections was filed. It was pleaded that an agreement to sell the house in dispute was never entered into by the respondent. The same was alleged to have been prepared by the appellant in connivance with the scribe and the alleged witnesses. Moreover, the suit property was pleaded to be the only residential house of the respondent and his family members. Therefore, he could not even think of selling the same to the appellant or anyone else. The appellant was stated to be a money lender. It was thus prayed that the suit be dismissed.

Replication was filed. From the pleadings of the parties, the following issues were framed by the learned trial Court on 11.03.2013:-

1. Whether the defendant being owner in possession of house property agreed to sell the same to the plaintiff and executed agreement dated 25.11.2003 in favour of the plaintiff, for a sum of Rs.2,00,000/- and received Rs.1,70,000/- as earnest money, as prayed for?OPP
2. Whether plaintiff always remained ready and willing and is still ready and willing to perform his part of

- contract?OPP
3. Whether the plaintiff is entitled for possession by way of specific performance of agreement to sell dated 25.11.2003, as prayed for?OPP
 4. Whether the plaintiff is entitled for permanent injunction, as prayed for?OPP
 5. Whether in the alternative, plaintiff is entitled for recovery of Rs.1,70,000/- along with interest, as prayed for?OPP
 6. Whether suit is not within limitation?OPD
 7. Whether suit is not maintainable in the present for,? OPD
 8. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD
 9. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court after considering the evidence on record concluded that the execution of agreement to sell dated 25.11.2003 was proved on record. However, it was held that intention of the parties while executing the agreement to sell was not to execute and register the sale deed in respect to the resident house, but was a mere money transaction. Therefore, it was held that the appellant was not entitled for possession of the disputed house by way of specific performance of agreement to sell dated 25.11.2003. Alternative relief of recovery of ₹1,70,000/- was directed.

Appeal preferred by the appellant-plaintiff was dismissed by the learned Additional District Judge, Shaheed Bhagat Singh Nagar, vide impugned judgement and decree dated 12.08.2015.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant-plaintiff vehemently argues that once it was held that the agreement to sell was indeed

executed, learned Courts below should have awarded the relief of specific performance of agreement to sell dated 25.11.2003. Affording the alternative relief, is not justified in this case. Moreover, merely because the agreement to sell in question was unregistered, it cannot be said that the same is not enforceable. He relies upon the decision of this Court in **Paramjit Singh and others Vs. Hardial Singh and others 2013(2) R.C.R.(Civil), 1020** and **Dhan Singh and another Vs. Jagbir Singh and others 2013(2) R.C.R.(Civil) 994**, in support of his arguments. It is thus prayed that this appeal be allowed and possession of the residential house by way of specific performance of agreement to sell dated 25.11.2003 be directed.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

There is no doubt that an unregistered agreement would not *per se* be unenforceable. In the present case, agreement to sell the residential house of 6 Marlas of land of the respondent was executed on 25.11.2003 for a total consideration of ₹2 lakh. A sum of ₹1,70,000/- was received as earnest money by the respondent. As per the recital in the agreement, sale deed was to be executed on or before 24.11.2006 on payment of the remaining balance sale consideration of ₹30,000/-.

Admittedly, possession of the property in question was never delivered to the appellant. Learned Additional District Judge, Shaheed Bhagat Singh Nagar, has rightly observed that the story put up by the appellant is not believable to the extent that intention of the parties was the sale of the residential house of the respondent. It is indeed highly

improbable that a purchaser who has given almost the entire consideration amount would agree for possession of the property to be handed over almost three years thereafter. The discrepancies in the statements of PW-1-Surinder Kumar and PW-2-Chaman Lal, as noticed by the learned First Appellate court, are indeed material. Certain other circumstances also point to the fact that the agreement was in-fact in regard to a money transaction. Appellant-Surinder Kumar, failed to explain the signatures of Sham Pal and a thumb mark on the alleged agreement to sell, though, it is stated to be explained that wife of Sham Pal had appended her thumb impression on the last page of the agreement. She is admittedly not a party to the agreement to sell. Thus, the need for thumb impression thereon is not explained. Adverse inference has been rightly drawn against the appellant for not revealing the name of the deed writer in the wake of the appellant recalling the names of the various deed writers working in the Tehsil Complex, Balachaur. Register of the deed writer was also not produced. Reliance placed upon by learned counsel for the appellant in **Paramjit Kaur's case (Supra)** and **Dhan Singh's case (Supra)**, is of no avail to him keeping in view the peculiar facts of this case. It has been rightly concluded that intention of the parties was not the sale of the residential house of the defendant but a mere money transaction. Therefore, relief of specific performance of agreement dated 25.11.2003 was rightly declined.

No other argument has been raised.

Learned counsel for the appellant-plaintiff is unable to point

out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decree dated 20.02.2014 and 12.08.2015 passed by the learned Addl. Civil Judge (Sr. Division) Balachaur and learned Additional District Judge, Shaheed Bhagat Singh Nagar, respectively, which warrants any interference by this Court.

There is a delay of six (06) days in filing of this appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

28.08.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No