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

RSA No.5473 of 2015 (O&M)

Date of Decision: December 17, 2018

Sujan Singh (now deceased) through LRs.

.....Appellants

Versus

Rajbir Singh ..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

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

Mr. C.B.Goel, Advocate for the Respondent.

SUDIP AHLUWALIA, J.

This Appeal is directed against the impugned Judgment and Decree dated 25.5.2015 passed by the Ld. District Judge, Panipat, vide which the appeal filed by the Plaintiff/Respondent was allowed after setting aside the judgment and decree dated 16.3.2012 of Ld. Trial Court.

2. The Trial Court had awarded a partial Decree in favour of Plaintiff, who had sought Specific Performance of the Contract for sale allegedly executed in his favour by the original Defendant on 27.9.2005 of the Suit House more fully described in the Plaint, apart from seeking recovery of Occupational Charges at the rate of Rs.2500/- per month along with interest thereupon and prayer for permanent injunction to restrain the original Defendant from alienating or damaging the said house in any manner. The

Agreement for Sale relied upon by the Plaintiff/Respondent dated 27.9.2005 was led into evidence from his side as Ex.P1 apart from certain other documents. The Trial Court awarded the decree for recovery of the sale price only but refused the prayer for Specific Performance since it was of the view that the aforesaid Sale Agreement being an unregistrered document was not enforceable in view of decision of this Court in the case of **'Gurbachan Singh Vs. Raghubir Singh' 2010(5) RCR (Civil) 737**, even though the genuineness of the document itself or the facts mentioned in the original Plaint were substantially found to be true after completion of the trial. Yet monentary compensation by way of Occupational Charges was not awarded, since the Trial Court found that it was mentioned in the original Agreement itself that possession of the premises in question had already been delivered to the Plaintiff, even though it was his averment that after having executed the Agreement for Sale and symbolically delivering possession to the Plaintiff, the Defendant had requested him for permission to continue residing in the said house for a few months more till he could secure any other suitable accommodation, and for that purpose had allegedly agreed to pay Occupational Charges at the rate of Rs.2500/- per month, which was however, not mentioned in the actual Sale Agreement (Ex.P1).

3. The Judgment and Decree of the Ld. Trial Court were challenged by the Plaintiff in the Court of Ld. Distt. Judge, Panipat, who vide his impugned judgment dated 25.5.2015 reversed the findings of the Trial Court which had held the Sale Agreement to be unenforceable, being an

unregistered document. On the other hand, relying on a subsequent Division Bench decision of this Court in **'Ram Kishan and another vs. Bijender Mann alias Vijender Mann and others' 2012(4) Latest Judicial Reports 857** and certain other judgments, the Ld. Lower Appellate Court had held that an unregistered Agreement to Sell at the most could only deprive its holder from any benefit conferred by Section 53 of the Transfer of Property Act alone, but it could be relied upon in a Suit for Specific Performance. Consequently, the Appellate Court modified the relief granted to the Plaintiff/present Respondent and instead directed the Legal Representatives of the Defendant/Respondent to execute and register the Sale Deed in favour of Plaintiff/Appellant. There is little scope for controversy over this position of law.

4. Now a perusal of the Trial Court's record goes to show that initially, the original Defendant/Appellant Sujan Singh (since deceased) did not appear in the Suit in spite of service of summons. He was theefore, first proceeded against exparte on 27.4.2007. Subsequently, on 17.7.2007 he filed an Application seeking to set aside the exparte order passed against him which, after hearing both the sides was allowed, subject to payment of costs of Rs.300/- on 7.11.2007 and he was directed to file his Written Statement as a Last Opportunity, since the Statutory time for filing the same had already lapsed_till then. Thereafter on the next date (12.12.2007) the aforesaid costs which were a condition precedent, were not paid on account of which, the right of Defendant/Appellant to file the Written Statement was struck off by the Ld. Trial Court and the matter posted to 6.3.2008 for

evidence of Plaintiff, but since the adjourned date was declared a holiday, so the case was ordered to be adjourned again to 3.6.2008. On that date, four witnesses from the plaintiff's side were present out of whom two were examined that very day while cross-examination of the remaining two witnesses was deferred on the request of counsel for the Defendant/Appellant himself to 20.10.2008. Thereafter the matter was again adjourned for the same purpose to 27.4.2009 on which date, no steps were taken on behalf of Defendant/Appellant who was therefore, again proceeded against exparte and the matter posted to 11.12.2009 for exparte consideration.

5. However in the meantime, the Defendant filed an Application to set aside the exparte order dated 27.4.2009 and the previous order dated 12.12.2007 vide which his defence had been struck off. After serving notice of the same upon the Plaintiff/Respondent, reply against the application was filed on 27.11.2009 and thereafter the matter was adjourned as many as on five occasions till the arguments were actually heard on the Application on 8.6.2010 and vide a separate order passed subsequently on that day, it was dismissed. The aforesaid order dated 8.6.2010 was never assailed or challenged by the Defendant/Appellant at any stage even though the Suit remained pending in the Trial Court for more than one year till it was finally decreed exparte in part on 16.3.2012. It is also noteworthy that at no point of time, the defendant ever offered to pay the outstanding cost or even tendered his Written Statement, which otherwise might have been accepted by the Trial Court or any Superior Court in the interest of justice.

6. The net result therefore, is that the impugned decree passed against the original Defendant/Appellant now represented through his Legal Representatives was virtually a one sided affair in which actually no defence was put in nor any effort made to avail of an appropriate remedy for setting aside the order striking out the defence in the Suit. It goes without saying therefore, that the evidence led on behalf of Respondent/Plaintiff on the basis of which, the Suit was decreed, is altogether unrebutted. For these reasons, this Court is at a loss to fault the approach of the Trial Court as well as Lower Appellate Court in ultimately deciding the factual matrix in favour of Plaintiff/Respondent on the basis of virtually unchallenged and unrebutted evidence, which was not contradicted from the defence side even by way of any pleadings in the Trial Court.

7. It has nevertheless been submitted by the Ld. Counsel for Appellant that no steps could be taken by his client(s) to avail any appropriate remedy in time with a view to have the order striking out their defence to be set aside, on account of prolonged illness and financial stringency of the original Defendant and after his demise his Legal Representatives, who are the present Appellants. Unfortunately, no premium can be awarded on such inaction on the part of the original Defendant or his successors on such grounds at this inordinately late stage when the original decree against them was passed more than six years ago on 16.3.2012, and the appeal preferred against such dismissal was also more than 3½ years ago on 25.5.2015. Suffice it to say that the financial stringency or illiteracy of a litigant cannot be considered a sufficient ground in a Judicial Proceeding conducted over a

prolonged period of time (in this case almost four years in the Trial Court and three years thereafter at the first Appellate stage). Needless to add, the Ld. Trial Court was obligated to decide the matter on merits on the basis of material and evidence which actually came before it even though it had granted more than sufficient time and indulgence to the defence side in spite of their persistent and prolonged *laches* as already noted earlier.

8. It was further submitted by the Ld. counsel for the Appellant that the Agreement of Sale was actually meant to be only a Security for repayment of certain monetary loan which had been incurred by the original Defendant, and that the disputed property in question carries much greater value than the nominal value of Rs. 2 lacs which was shown as the consideration price in the aforesaid Agreement. At the cost of repetition, it may be mentioned that no cognizance can be taken on such a submission at this highly belated stage in a Regular Second Appeal when in fact not even a bare pleading to this effect was ever placed on record before the Ld. Trial Court. Nevertheless, Ld. counsel for the Respondent has countered even this submission by drawing attention of this Court to the documents exhibited in the Trial Court. The impugned Sale Agreement in favour of Plaintiff/Respondent concerning the said house (Ex.P1) is dated 27.9.2005 and value of the same has admittedly been mentioned therein as Rs. 2 lacs. But the Sale Deed by which the original Defendant had himself acquired the Title to the same property on 12.2.1992 is also on the record of the Trial Court as Ex.P2, and perusal of the same shows that the Defendant had purchased the same property for a consideration price of Rs.15,000/- only,

which he ostensibly agreed to sell to the Plaintiff/Respondent some 13 years later at more than 13 times of the consideration price himself paid by him. So the submission that the aforesaid Agreement of Sale was actually meant to be only a document for securing repayment of an alleged loan, which in any case has not been pleaded before the Ld. Trial Court cannot be given any credence.

9. Similarly, another submission/offer made before this Court by the Ld. counsel on behalf of Appellants during hearing to the effect that they are willing to refund the aforesaid amount of Rs.2 lacs to the Respondent/Plaintiff at this stage is also not worthy of any consideration or indulgence in the given facts and circumstances.

10. To sum up therefore, this Court finds no merit in the present Appeal, which is accordingly dismissed.

(SUDIP AHLUWALIA)
JUDGE

December 17, 2018
AS

1. Whether speaking/reasoned ? Yes/No
2. Whether reportable ? Yes/No