

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

RSA No. 303 of 2018(O&M)

Date of decision: 16.1.2018

Dhuli Chand

....Appellant

VERSUS

Dhan Raj and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Akashdeep Sethi, Advocate for the appellant.

REKHA MITTAL, J.

The instant appeal directs challenge against consistent findings recorded by the Courts below whereby suit for permanent injunction filed by the appellant was dismissed by the trial Court and the judgment passed by the trial Court was affirmed in appeal by the Additional District Judge, Fazilka.

The appellant/plaintiff claimed permanent injunction qua the suit property situated within the red line of village Shergarh, Tehsil Abohar on the premise that he is in peaceful possession of the said house which was purchased by him from his father for a sale consideration of Rs.80,000/- vide agreement dated 08.06.2007. The defendants, his real brothers, have no right to interfere in his peaceful possession of the suit house.

Respondents No.1 and 3 filed their written statement alleging that they have nothing to do with the suit property. However, respondent No.2 filed the written statement seriously contesting claim of the appellant with regard to his ownership and possession of the suit house with the averments that the agreement dated 08.06.2007 is forged, fabricated and fictitious document and does not create any title. It is averred that father of the answering defendant who was residing with him had divided his entire property to the plaintiff and defendants and also executed a Will in favour of the parties. He claimed himself to be owner in possession of the suit house since his childhood and residing there with his family.

After having heard counsel for the parties in the light of materials on record, trial Court negated plea of the appellant to be the owner or/and in possession of the suit house and for that reason, the suit was dismissed. The Court in appeal refused to rely upon agreement of sale and affirmed findings of the trial Court that the appellant has failed to establish his plea with regard to his possession over the suit house.

Counsel for the appellant has assailed findings of the Tribunal primarily by relying upon agreement dated 08.06.2007 that also contains a recital with regard to delivery of possession of the property, subject matter of the agreement, in favour of the appellant. It is argued with vehemence that the Courts below committed a gross error rather perversity by refusing to rely upon the agreement Ex.P1.

Counsel for the appellant has not referred to any other evidence to establish his plea that he is in possession of the suit house except the agreement Ex.P1. The question that falls for consideration is

whether the appellant can use the agreement Ex.P1 for proving his possession over the property in question. Indisputably, agreement is not a document of title qua the suit property. The appellant till date has not filed a suit seeking specific performance of agreement to sell Ex.P1 that was purportedly executed more than 10 years ago. The appellant is claiming his possession of the suit property in part performance of the agreement to sell Ex.P1. According to Section 17(1A) of the Indian Registration Act, 1908 (in short 'the Act'), documents containing contract to transfer for consideration, any immovable property for the purpose of Section 53(A) of the Transfer of Property Act, 1882 shall be registered if they have been executed on or after the commencement of the Registration and other related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of Section 53-A . Section 49 of the Act deals with effect of non-registration of documents required to be registered. It says that no document required by Section 17 to be registered shall be received as evidence of any transaction affecting such property or conferring such power unless it has been registered.

In the instant case, the agreement to sell is not a registered document, therefore, the same can not be received as evidence of any transaction affecting the suit property or conferring such power. Though the Courts below have failed to advert to the provisions of the Act creating legal bar against receiving such a document in evidence but still the appellant cannot escape from legal implications in this regard. In this view of the matter, the appellant cannot derive advantage from agreement Ex.P1

to prove his possession. In this view of the matter, contention raised by counsel for the appellant is not meritorious and liable to be rejected.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

JANUARY 16, 2018		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no