IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5334 of 2018 (O&M)
Date of Order: 18.12.2018

Mukhtiar Kaur

....Appellant

Versus

Dalbara Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr. Dinesh Sharma, Advocate for the appellant.

Mr. Gurbir Singh Pannu, Advocate for the respondent.

DR. RAVI RANJAN, J (ORAL)

Heard learned counsel for the parties.

This appeal is directed against the judgment and decree dated 11.05.2018 passed in Civil Appeal No.52 of 2016 by the Additional District Judge, Ludhiana by which the first Appellate Court while affirming the findings recorded by the trial Court, has dismissed the appeal. This appeal is also directed against the judgment and decree passed by the Civil Judge (Jr. Division), Ludhiana in Civil suit No.348 of 2009 on 26.8.2016 by which the suit for possession by way of specific performance of agreement to sell dated 30.11.2017 filed by the plaintiff-respondent was decreed and the defendant was directed to execute the sale deed of the suit property as per the aforesaid agreement to sell and hand over vacant possession of the suit property to the plaintiff on payment of balance sale consideration within two months, failing which, the plaintiff was held to be at liberty to execute the judgment and decree by adopting legal course.

Plaintiff filed the suit on the basis of agreement to sell dated 30.11.2007 whereby the defendant agreed to sell the plot in issue along with construction, which has been detailed in the plaint, on receipt of Rs.40 lacs as earnest money out of total sale consideration of Rs.51.80 lacs while the remaining consideration amount was to be paid at the time of registration of sale deed on or before 30.11.2008.

It is submitted that the possession of the area agreed to be sold was delivered to the plaintiff, who was also, according to the terms and conditions of the agreement, at liberty to rent out the shops and receive the rent, get the same vacated and further to sell the same to any person for which the defendant would have no objection. However, somehow or the other, defendant did not turn up to execute and for registration of the sale deed though the plaintiff remained present to perform his part of contract and was ready along with the requisite amount. He got his presence marked by way of his affidavit attested by the Executive Magistrate. Plaintiff further offered the balance sale consideration even after the aforesaid date i.e on 01.12.2008 but the defendant refused to receive the same. On 19.12.2008, plaintiff learnt that the defendant is negotiating to transfer the property to third person and is attempting to create charge or additional loan. Then, he served a notice dated 20.12.2008 calling upon the defendant to execute the sale deed as per the agreement. When the plaintiff approached the defendant, she stated that she should execute the sale deed in favour of plaintiff on 28.2.2009. However, on that date also, when the plaintiff called upon the defendant to be present before the Sub Registrar, the defendant did not turn up. Then the suit was filed.

Upon notice, the defendant appeared and apart from taking preliminary objections of maintainability, cause of action and locus standi etc, the execution of agreement to sell the plot was denied as also the factum of receiving the earnest money. Apart from that, all the averments of plaint were denied.

Upon consideration of pleadings of the rival parties, the trial Court framed the following issues:

> *"1. Whether the plaintiff is entitled to possession by way of specific performance of the agreement to sell dated 30.11.2007 as prayed for?OPP*
> *2. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP*
> *3. Whether the suit of the plaintiff is not maintainable?OPD*
> *4. Whether the plaintiff has no locus standi to file the present suit?OPD*
> *5. Whether the plaintiff has no cause of action to file the present suit?OPD*
> *6. Whether the suit is not properly verified?OPD*
> *7. Relief."*

In order to prove his case, plaintiff examined himself as PW1 besides producing Narinder Singh as PW2 and Dr. Inderjit Singh, Handwriting and Finger Prints Expert as PW3. That apart, he also brought on record the copy of jamabandi for the year 2003-04 and 2008-2009 as Ex.P.9 and Ex.P.10. On the other hand, defendant examined Suresh Singh as DW1, who has been portrayed as her employee and also her tenant Rajesh Singh, who was examined as DW2. The defendant examined herself as DW3.

The trial Court has discussed the pleadings and evidence of the parties in detail and has taken notice that in the written statement, there is denial by the defendant of having executed the document of agreement for sale and portrayed it as forged and fabricated document but no evidence was led on her behalf regarding any forgery. In the written statement, she has submitted that alleged agreement does not bear her thumb impression or signature, however, while being examined as DW3, she has deposed that her thumb impressions/signatures were obtained by the plaintiff on blank papers when she went to get her air ticket extended from the plaintiff. The trial Court has taken this as contradiction in her stand. It is informed by learned counsel for the appellant at the time of hearing that an attempt was made to amend the written statement before the lower Appellate Court to the aforesaid extent so that contradictions do not remain in the stand of the defendant-appellant but the said amendment petition was dismissed by the lower Appellate Court and that the order was never challenged before any superior Court.

In order to prove the issue whether the document contained her signatures or not, Handwriting and Finger Prints Expert was examined by the plaintiff, who has submitted a report that the thumb impression tallies with the disputed thumb impression, which ensures that agreement to sell bears the thumb impressions of the defendant because the defendant could not rebut the said opinion of handwriting expert by leading any cogent evidence or even she did not examine her own handwriting and finger prints expert. Plaintiff has also brought on record the documents i.e agreements for sale of his land as Ex.P.7 and Ex.P.8 as per which he sold his two properties for Rs.20.61 and Rs.25.80 lacs right before the execution of the agreement to sell in question dated 30.11.2007 and took a stand that it was done to meet the consideration amount of the present agreement. So far as readiness and willingness of the plaintiff to perform his part of contract is concerned, the plaintiff has placed a copy of notice and postal receipt etc on record. He has proved copy of his affidavit dated 01.12.2008 as Ex.P.2. However, the defendant has controverted this affidavit by saying that there are some lines added in this affidavit. Though it was noticed by the trial Court that there are some lines in different ink but the stand of the plaintiff is that those lines were typed prior to attestation of the affidavit before the Executive Magistrate. The defendant could have made effort for examination of the record which was lying before the Executive Magistrate to ascertain whether those lines were present in the original or not but she did not do that. Therefore, such objection was found to have no foundation and Ex.P.2 was considered as genuine document. On the basis of such consideration, the trial Court returned the finding that the deed of agreement to sell was executed and the plaintiff was always ready and willing to perform his part of contract, therefore, direction was issued while allowing the suit, to the defendant to execute the sale deed and hand over the possession. The judgment and decree was challenged in Civil Appeal No.52 of 2016 by the defendant, however, that was also dismissed, upholding the findings recorded by the trial Court and also taking a stand that no evidence has been led by the appellant to prove her plea of agreement being forged and fabricated.

Learned counsel for the appellant has made first submission that there is no cogent evidence to prove that actually Rs.40 lacs was paid by way of earnest money. Even if it is assumed that the agreement for sale i.e Ex.P.7 and Ex.P.8 were actually executed but that does not prove that that earnest money was actually given to the defendant-appellant.

Aforesaid submission made on behalf of the defendant-appellant is noted only to be rejected for the reason that once the agreement for sale between the parties is accepted to be genuine document and the recital discloses that Rs.40 lacs was also received by the defendant as earnest money, then the defendant is not in position to deny the same. The issue of genuineness of the deed of agreement for sale that has been brought on record as Ex.P.1 stands concluded by the concurrent findings of both the courts below especially when no cogent evidence was led by the defendant to rebut the same.

Learned counsel for the appellant next contends that the unregistered agreement for sale i.e Ex.P.1 is not admissible in the eye of law because in case agreement for sale is along with delivery of possession then the document would mandatorily be required to be registered as per the provisions contained in Section 17 (1-A) of the Registration Act, 1908 (for short "Act 1908").

For better appreciation, it would be relevant to reproduce Section 17 (1)(a) of the Act 1908, which reads as under:

> ***"Section 17 in The Registration Act, 1908***
>
> *17. Documents of which registration is compulsory.—(l) xx xxxxx*
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> *[27] [(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 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 the said section 53A.]*
>
> *(2) xxxxx xxxxxx xxxxxx*
>
> *(3) xxx xxxx xxxxxx*

Aforesaid provision indicates that the documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 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 the said section 53A.

Section 49 of Act 1882 reads as under:

> *"49. Effect of non-registration of documents required to be registered.—No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—*
>
> *(a) affect any immovable property comprised therein, or*
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> *(b) confer any power to adopt, or*
>
> *(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:* ***[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument****.]* (emphasis is mine)

It is clear from the proviso of the aforesaid provision which deal with the effect of non-registration of the document required to be registered that an unregistered document affecting immoveable property and required by the Registration Act, 1908 or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.

In fact, this issue is no longer *res integra* as the same has already been considered and decided by a Division Bench of this Court in **Ram Kishan and another vs. Bijrneder Mann @ Vijender Mann and others, 2013 (2) CivCC 188** holding that an agreement to sell does not confer any right, title or interest except conferring right to seek enforcement of agreement by filing a suit for specific performance under the Specific Relief Act, 1963 under Section 49 of Act 1908 especially the proviso thereto read with Section 53-A of the Transfer of Property Act, 1882 (for short "Act 1882"). Thus, it is to be held that the suit for specific performance based upon an unregistered agreement to sell accompanied by delivery of possession or executable in favour of a person who is already in possession cannot be said to be barred by Section 17 (1-A) of the Act 1908. Hon'ble Supreme Court also in **Ameer Minhaj vs. Dierdre Elizabeth (Wright) Issar and Ors, 2018(3) RCR (Civil 468** has held that even if unregistered document of sale deed is executed whereas requirement was that it should have been registered, the same can still be admitted as evidence for a limited purpose without having any effect for the purposes of Section 53-A of Act 1882.

Thus, in my considered view, the outcome of non-registration of sale document would be that it may not be taken as proof of delivery of possession but so far as the agreement for sale is concerned, as per proviso to Section 49, it would be admissible in evidence of such contract.

As a result of aforesaid discussion, this appeal, since the issues involved in the appeal stand concluded by concurrent findings on facts and no cogent ground could be raised by learned counsel for the appellant at the time of hearing which has not already been answered by the judicial pronouncement, is bound to fail and is not required to be admitted. Accordingly, the same is dismissed. However, the parties will bear their own costs.

December 18, 2018 **(DR. RAVI RANJAN)**
manoj **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No