

In the High Court of Punjab and Haryana at Chandigarh

RSA-587 of 2018(O&M)

Date of Decision:7.5.2018

Jeewani @ Jiwani

---Appellant

vs.

Sushila Devi

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Parveen Dahiya, Advocate
for the appellant

Rekha Mittal, J.

CM No. 6809-C of 2018

Heard.

Allowed as prayed for. Annexures A/2 to A/4 (Colly.) are taken on record subject to just exceptions.

Disposed of accordingly.

CM No. 1435-C of 2018

Prayer in this application is for condoning delay of 81 days in filing the appeal.

In view of averments made in the application and arguments advanced, application is allowed and delay of 81 days in filing the appeal stands condoned.

Disposed of accordingly.

RSA-587 of 2018

The present appeal directs challenge against consistent findings

recorded by the courts whereby suit for possession by way of specific performance of agreement to sell dated 25.7.2006 filed by the appellant/plaintiff was dismissed by the trial court and the appeal preferred by unsuccessful plaintiff against judgment and decree dated 21.2.2013 has been rejected by the Additional District Judge, Sonapat.

In brief, case of the appellant/plaintiff is that the respondent/defendant agreed to sell the suit property for a sale consideration of Rs. 7,00,000/-. After receiving entire price, the parties set their hands on the agreement reduced into writing on 25.7.2006 in presence of the witnesses. A receipt was also executed by the proposed vendor. Requisite sale deed was to be executed as and when the appellant desired. Though possession of the property was delivered to the appellant but possession has been claimed just for maintaining form of the suit. The appellant always remained ready and willing to perform her part of the agreement.

The respondent/defendant filed the written statement and, in turn, raised preliminary objections inter alia locus standi of the appellant, cause of action, maintainability and estoppel. It is averred that the respondent is an illiterate widowed old lady. The alleged agreement to sell and receipt have been fraudulently obtained. Appellant's possession over suit property is not admitted but she has claimed to have received possession, therefore, agreement to sell is inadmissible for want of registration. All material averments of the plaint have been denied with a prayer for dismissal of the suit.

The trial court framed issues, reproduced in para 4 of the judgment. The parties were permitted to adduce evidence in support of their respective claims. After having heard counsel for the parties, the trial court determined issues No. 1, 2 and 4, taken up jointly, against the appellant/plaintiff whereas issues No. 3 and 5 were answered in favour of the respondent/defendant and consequently, the suit was dismissed.

As has been noticed hereinbefore, findings recorded by the trial court have been affirmed in appeal.

Counsel for the appellant would urge that the courts refused to accept claim of the appellant/plaintiff primarily on two grounds namely the document purported to be an agreement of sale is unregistered and the appellant has failed to prove the alleged agreement, in accordance with law. It is argued that agreement of sale does not require registration for maintaining a suit seeking its specific performance. In support of his contention, he has relied upon Division Bench judgment of this Court **Ram Kishan and another vs. Bijender Mann alias Vijender Mann and others 2013(2) RCR (Civil) 419.**

I have heard counsel for the appellant, perused the paper book particularly the judgments impugned and the documents annexed with CM No. 6809-C of 2018.

As per case set up by the appellant/plaintiff, the respondent entered into agreement to sell on 25.7.2006 and received sale consideration of Rs. 7,00,000/- on 25.7.2006 itself and executed receipt dated 25.7.2006 in presence of witnesses Smt. Rajo Devi daughter of Amar Singh and Manoj son of Azad Singh. The sale deed was agreed to be executed as and when the appellant desired. Contrary to her stand taken in the plaint, the appellant filed her affidavit Ex. PW1/A by way of examination in chief. A relevant extract from para 2 of the affidavit reads as follows:-

“That the defendant entered into an agreement to sell with the deponent on 25.01.2006 and agreed to sell the above said land detailed in para no. 1 of the plaint in favour of the deponent for a sale consideration of Rs. 7,00,000/- only (Rs. Seven lakh Only) and the defendant received Rs. 1,50,000/- only (Rs. One Lac Fifty Thousands Only) as a Bayana (part payment) from the deponent and on dated 12.04.2006 the defendant received the balance amount Rs.

5,50,000/- only (Rs. Five Lakh Fifty Thousands only) from the deponent and the deponent purchased the stamp papers for Sale Deed and the document writer prepared the documents of sale deed and the defendant made thumb impression on those papers of Sale Deed on the same day and witness Rajo Devi also signed on those papers before the defendant but unfortunately the N.O.C. was not got from the concerned department and so that on that day the sale deed was not registered and then the deponent asked for physical possession but the defendant made request to live for two or three month because her new house is under construction. The photo copy of the bank statements of the deponents is attached herewith this affidavit as ANNEXURE-A and the same is Exhibited as PW1/1. The photo copy of the said sale deed which was not registered is attached herewith this affidavit as ANNEXURE-B and the same is Exhibited as PW1/2.”

The courts have noticed that during pendency of the suit, application for amendment of the plaint has been filed but the same was not allowed. The case set up by the appellant and the documents relied upon by her particularly the alleged agreement to sell dated 25.7.2006 and receipt of even date are in complete contradiction to the averments made in para 2 with regard to there being an agreement to sell on 25.1.2006, payment of Rs. 1,50,000/- on 25.1.2006 and balance amount of Rs. 5,50,000/- on 12.4.2006. Not only this, if the appellant had already paid the entire sale consideration of Rs. 7,00,000/- prior to 25.7.2006, where was the occasion for the respondent/defendant to execute a receipt acknowledging receipt of Rs. 7,00,000/- in presence of witnesses on 25.7.2006 which fact is also referred to in the agreement to sell. The story propounded by the appellant in para 2 of the affidavit demolishes her case with regard to there being an agreement of sale on 25.7.2006 or payment of Rs. 7,00,000/- to the

respondent/defendant at that time on the said date.

Counsel for the appellant may be right in his submission that for seeking specific performance of an agreement, the same does not require registration even if the agreement records the factum of delivery of possession or payment of sale consideration. However, the courts have taken a serious view of the aforesaid grave contradiction in the story brought forth by the appellant in the plaint viz-a-viz statement as a witness and rightly so. Under the circumstances, I do not find an error much less illegality in findings consistently recorded by the courts warranting intervention in regular second appeal that can be admitted for deciding a question of law.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

7.5.2018
paramjit

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