

RSA No.701 of 2019(O&M)
Date of Decision: 29.08.2019

Versus

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kuldeep Singh, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

[1]. Defendant/appellant through his LRs is in regular second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for possession.

[2]. Plaintiff filed a suit for possession on the ground that his father was owner in possession of the suit property. After the demise of his father, the plaintiff became owner of the property in question and the defendant has no right, title or interest in the suit property. Defendant took possession of the property forcibly in an illegal manner.

[3]. Defendant contested the suit and relied upon

agreement to sell dated 16.11.1970, which was executed in his favour for full payment of consideration with delivery of possession.

[4]. During course of arguments, learned counsel for the appellant submitted that on the basis of agreement to sell, a suit for specific performance was once filed, but in the said suit, sale deed was not allowed to be executed. Only possession of the appellant was acknowledged. Defendant/appellant could not lead any evidence to establish his title over the suit property in any capacity. The possession of the plaintiff was held to be unauthorized. The appellant could not bring any evidence in respect of filing of suit for specific performance or the decision thereof. Plaintiff has denied the agreement to sell Ex.D1. For want of any evidence of title, the possession of the defendant/appellant was held to be that of unauthorized occupant. Defendant could not prove due execution of agreement to sell Ex.D1 for want of examination of scribe and other attesting witnesses of the same.

[5]. Even during cross-examination, DW 9 has admitted that she had no knowledge with regard to scribe and attesting witnesses of Ex.D1. Execution of Ex.D1 was not proved and was held to be of no consequence. Even Ex.D1 was not a registered document. The recital of Rs.2000/- could not be

considered for want of registration under Section 17 of the Registration Act as the value exceeded more than Rs.100/- for the transfer of immoveable property. Full payment agreement coupled with delivery of possession requires registration. Even otherwise, no title can be passed over to the defendant for want of such instrument.

[6]. In view of above, impugned judgments are not found to be the result of misreading of evidence or suffered with any perversity. No law point worth consideration is involved in the present case. This appeal is accordingly dismissed.

[7]. Since the main case has been dismissed on merits, therefore, there is no necessity to pass any order in the application for condonation of delay of 37 days in filing the appeal and the same is accordingly disposed of. Remaining applications are also disposed of accordingly.

29.08.2019

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking **Yes/No**

Whether reportable **Yes/No**