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

**RSA No.4077 of 2019 (O&M)
Date of Decision: 02.09.2019**

Komal Singh

.....Appellant

Vs

Sudha Rani

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sanjiv Kumar Aggarwal, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Defendant is in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for possession with consequential relief of injunction.

[2]. Plaintiff Smt. Sudha Rani filed a suit for possession on the basis of title of the property marked by letters 'ABCD' and 'CDEF' in the site plan attached with the plaint. Permanent injunction was also sought restraining the defendants No.1 to 2 and 4 from raising further construction and from alienating the suit property.

[3]. Plaintiff pleaded that the suit land was purchased from Ved Ram vide registered sale deed dated 11.04.1994 and she

was put in possession of the suit property on 21.04.1994 by the aforesaid Ved Ram. Taking undue benefit of her absence, defendant No.1 illegally took possession of the plot in question i.e. marked by letters 'ABCD' in the site plan and also raised illegal construction. Defendant No.2 occupied the portion marked by letters 'CDFE' as shown in the site plan in an illegal manner. Plaintiff came to know about illegal construction by defendants No.1 and 2 on 10.09.2007.

[4]. Defendant No.1 took the stand that the plaintiff had entered into an agreement to sell of the plot in question with defendant No.4 Komal Singh on 16.06.2003. The aforesaid Komal Singh installed defendant No.1 as his tenant. The agreement to sell dated 16.06.2003 with Komal Singh was never converted into any enforcement of bilateral obligation.

[5]. Learned counsel for the appellant by referring to para no.6-A of the plaint submitted that defendant No.1 submitted his written statement on 23.10.2007 and put preliminary objection no.6 and alleged that plaintiff had entered into agreement to sell with defendant No.4 on 16.06.2003 and defendant No.1 was installed as tenant by defendant No.4. In the event of proving any alleged agreement to sell, then the alleged agreement to sell was cancelled and rescinded due to lapse of time and non-payment of remaining amount of consideration.

[6]. I have considered the submissions made by learned counsel for the appellant.

[7]. In view of amended para no.6-A of the plaint, the same did not advance the case of the appellant inasmuch as that cancellation/recession of agreement to sell was on account of non-adherence to the terms and conditions of the agreement to sell. Non-compliance of agreement to sell had entailed in cancellation of the same. The possessory title in favour of defendant No.4/appellant would not crystallize any right in favour of defendant No.1 on the basis of tenancy.

[8]. Evidently, the agreement to sell was not registered. Any such agreement to sell would not confer any title in favour of defendant No.4/appellant. Any such tenancy created by a person having no title would also go along with his right to be in possession.

[9]. In view of law laid down by the Hon'ble Apex Court in **Avinash Kumar Chauhan vs. Vijay Krishna Mishra, 2009(1) Civil Court Cases 735(SC)** the agreement to sell does not create any title as the same was not registered. Any full payment agreement to sell coupled with delivery of possession does not advance any such right under Section 53-A of the Transfer of Property Act (for short 'the Act') in favour of the

vendee for want of registration of agreement to sell. The ownership of the plaintiff was not disputed by the defendants, rather the defendants set up a case of agreement to sell executed by the plaintiff in favour of defendant No.4 on 16.06.2003 for a consideration of Rs,3,40,000/- and defendant No.4 was put in possession.

[10]. Since no suit for specific performance was filed as the agreement to sell was never enforced. Plea under Section 53-A of the Act is not attracted for want of registration of agreement to sell. The defendants failed to discharge their onus. The agreement to sell-cum-receipt dated 16.06.2003 (Mark 'A') has evidenced that it was written on a plain paper. Even as per contents of receipt, it was agreed between the parties that the buyer i.e. defendant No.4 Komal Singh would make the payment of Rs.50,000/- by 15.07.2003 and the remaining payment of Rs.2,85,000/- was to be paid by 15.09.2003. Since the document was not registered, therefore, in terms of Section 49 of the Indian Registration Act, such an unregistered document would not create any title in favour of defendant No.4 and the same cannot be received in evidence, even in a suit for specific performance which was never filed by defendant No.4.

[11]. No question of law worth cognizance is found to have been involved in this regular second appeal, nor the findings

recorded by the Courts below are found to be perverse or the result of misreading of evidence. The present appeal is accordingly dismissed in *limine*.

September 02, 2019

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No