

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

RSA No. 4229 of 2019(O&M)

Date of decision: 26.9.2019

Sharanjit Kaur and anotherAppellants

VERSUS

Charanjit KaurRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sandeep Kumar, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for possession of property bearing MCJ No.1960 situated at Agwar Gujran, Mohalla Kukkar Gali, Jagraon, District Ludhiana was decreed by the trial Court vide judgment and decree dated 24.10.2017 and appeal preferred by unsuccessful defendants/appellants did not find favour with the Additional District Judge, Ludhiana.

The sole submission made by counsel for the appellants is that appellants are entitle to retain possession of the suit property in part performance of agreement dated 26.06.1991 marked as Ex.D2 and a copy thereof is Annexure A-1. It is further submitted that on the basis of this agreement, the appellants filed suit for specific performance which was dismissed by the trial Court while deciding the suit for possession filed by the respondent and two appeals preferred by the appellants before the first

Appellate Court were dismissed vide common judgment and decree dated 03.09.2019.

Perusal of document (Annexure A-1) makes it evident that there is no consideration paid under this agreement. Rather the same appears to be a relinquishment deed, even though in the concluding lines, it is mentioned that the executant No.1 shall execute the sale deed in favour of executant No.2 by 15.07.1991.

Section 53-A of the Transfer of Property Act, 1882 (in short 'the Act') deals with part performance. A relevant extract therefrom reads as follows:-

“Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract...”

Protection under Section 53-A of the Act is available if there is a contract for transfer of property for consideration. Since in the present case, the agreement pressed into service does not make reference to consideration, the provisions of Section 53-A of the Act are not applicable in the present case. It further appears that the appellants did not raise the

plea of part performance knowingly that the agreement in question is without consideration.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

Counsel for the appellants would pray that the appellants may be allowed some time to vacate the demised house and handover its vacant possession to respondent/decree holder. He would also apprise that execution proceedings are pending before the Court below.

The appellants are given three months' time to hand over vacant possession of the property to respondent/decree holder, (if the decree is not already executed), subject to the following conditions:-

1. The appellants will furnish an undertaking before the executing Court within a period of 10 days that they shall hand over vacant possession of the house on or before 31.12.2019.
2. The appellants shall pay use and occupation charges for the period of three months at the rate of Rs.5000/- per month, totalling Rs.15,000/- at the time of furnishing of undertaking in the Court.

Nothing stated hereinbefore shall cause prejudice to the respondent with regard to recovery of use and occupation charges in case she initiates any proceedings in this regard.

SEPTEMBER 26, 2019

'D. Gulati'

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no