

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

RSA-4688-2012 (O&M)

Date of Decision: September 05, 2019

Wazir

Appellant

Versus

Ram Kumar and another

Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. S. K. Verma, Advocate
for the appellant.

Mr. R. N. Lohan, Advocate
for respondent No. 1.

Mr. Prateek, Advocate for
Mr. Munish Mittal, Advocate
for respondent Nos. 2 and 3.

JAISHREE THAKUR, J. (Oral)

CM-13043-C-2012

This is an application that has been filed under Section 151
CPC seeking condonation of delay of 207 days in re-filing the appeal.

For the reasons mentioned in the application, the same is
allowed. The delay of 207 days in re-filing the appeal stands condoned.

Main case

In the instant regular second appeal, the appellant herein seeks
to challenge the judgment and decree dated 17.11.2010 and 01.09.2011
passed by Ld. Addl. Civil Judge (Sr. Divn.), Jind and District Judge, Jind

respectively whereby the suit of the respondents herein for possession has been decreed and the appeal against the same dismissed.

In brief, the facts are that a suit for possession of a residential house bearing No. 815/2, Rambir Colony, Jind was filed by the respondents herein along with a plea seeking permanent injunction for restraining the appellants-defendants from alienating the house in question. The plaintiffs claimed to be owners of a house on the basis of a sale deed dated 20.06.1967 on the basis of a family settlement entered into dated 15.03.2000. The plaintiffs had gone to their native village and in their absence, it was claimed that the defendants had broken the lock of the house and forcibly occupied the same. On their return, the plaintiffs saw that the defendants had encroached and forcibly occupied the premises and on their asking refused to vacate the said property, which led to the filing of the suit.

The suit was contested and a preliminary objection was taken regarding the maintainability, cause of action and locus-standi. The defendants claimed to have purchased the house from the plaintiffs vide agreement dated 27.08.2007 for a sale consideration of ₹1,20,000/- and possession was stated to have been delivered to him. It was stated in the written statement that after having received the full amount of payment, the plaintiffs could not claim any interest, right or title to the said property and that the defendants had become owner in possession thereof.

On the basis of the pleadings, issues were framed and both parties were allowed to lead their respective evidence. In order to prove their case, the plaintiffs examined Surinder as PW-1, who tendered

photocopy of sale deed Ex. P-1. The plaintiff No.1 examined himself as PW-2 and tendered his affidavit as Ex.PW-2/A. PW-3 -Pala Ram, elder brother of the defendant appeared and tendered his affidavit as Ex.PW-3/A. Another brother Meshari, appeared as PW-4 and tendered his affidavit as Ex. PW-4/A. Balraj Sharma appeared as PW-5 and proved site plan as Ex. P-14 and Ex. P-1 was proved as the copy of the sale deed. On the other hand, the the defendant appeared and examined himself as DW-1who tendered affidavit DW-1/A. One Rajender Kumar appeared as DW-2 and tendered his affidavit as DW-2/A and proved the agreement to sell. The Addl. Civil Judge, (Senior Division), Jind took up issues No. 1 and 2 namely whether the plaintiffs were entitled for possession of residential house as detailed in the headnote of the plaint and whether they were entitled to the decree of permanent injunction in their favour and consequently relief as sought.

The Trial Court by taking into account the evidence of the defendant claiming to have become owner in possession of the suit property on the basis of the agreement to sell Ex. DW-2/B came to hold that the same did not confer any title or ownership of the house. It was further noted that the agreement to sell was not a registered document. It was also noted that since the defendant had claimed to have paid the expenses of entire construction and then taken possession of the suit property, the said agreement to sell would be required to be compulsorily registered. Accordingly both the issues were answered in favour of the plaintiffs and the suit was decreed holding that the possession of the appellant in the suit property is unauthorized. The appeal of the defendant too was dismissed

by the District Judge, Jind.

Learned counsel appearing on behalf of the defendants contends that both the Courts below have erred in allowing the suit of the plaintiffs. It is contended that both the Courts below have failed by not taking into account his written statement wherein it has specifically been pleaded that he had purchased the suit property from the plaintiffs for ₹1,20,000/- vide an agreement dated 27.08.2007. It is also argued that the execution of the agreement to sell is not disputed since no replication had been filed and, therefore, the defendant who had been put in possession of the suit property as per the recital in the agreement to sell would be entitled to protection of his possession.

I have heard learned counsel for the parties and have gone through the pleadings and the evidence. The appellant herein is seeking to establish the ownership and possession on the basis of an agreement to sell Ex. DW-2/B, however, the said agreement to sell does not convey any title until and unless there is a sale deed that follows. It is settled law that agreement to sell does not convey any title. The onus of proving that he had purchased the house vide agreement to sell dated 27.08.2007 was upon the appellant herein who has not been able to discharge the said onus. Even otherwise, the Courts below have gone into the question whether the document had been properly attested in terms of Section 3 of the Transfer of Property Act, 1882, which was lacking in the instant case, as agreement Ex. DW-2/B bears the signature of only one attesting witness namely Rajender who appeared as DW-2 and admitted his signatures on the said document.

Admittedly the agreement to sell Ex. DW-2/B is not a

registered document despite having a recital regarding delivery of possession. Since the value of the immovable property is more than ₹100, the said document would necessarily require registration and therefore, title could only be transferred if the said document satisfied the conditions as specified in Section 17 of the Registration Act. Both the Courts below have rightly appreciated the evidence and have come to the conclusion that the appellant herein has not been able to establish that he has become owner of the property in dispute on the basis of an agreement to sell.

Learned counsel appearing on behalf of the appellant herein has not been able to point out any infirmity in the given concurrent findings of facts for this Court to interfere under Section 100 CPC.

Consequently the appeal stands dismissed.

September 05, 2019
seema

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No