

In the High Court of Punjab and Haryana at Chandigarh

**RSA-80 of 2015 (O&M)
Date of Decision: 3.7.2019**

Som Nath and another

---Appellants

versus

Ram Pal (deceased) through Lrs and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vikas Singh Advocate for the appellants
Mr. Vinod S. Bhardwaj, Advocate, for respondents No. 1 and 2

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for permanent injunction in respect of residential house/property measuring 60 square yards, detailed in head note of the plaint, was dismissed.

The facts of the case, extracted from judgment of the first Appellate Court are that the plaintiffs purchased suit property from defendant No. 1 for sale consideration of Rs. 80,000/- and defendant No. 1 executed agreement to sell and receipt dated 4.12.2008 in favour of plaintiffs, in the presence of Lakhmi son of Chhajju Ram and Ram Pal son of Daulat Ram and since then the plaintiffs are in possession of suit property. It is averred that the plaintiffs along with their children are peacefully residing in the suit house without interruption. Ram Pal defendant No. 1 is the son of real uncle (Tau) of the plaintiffs. Defendant No. 1 executed a false back dated alleged agreement to sell in favour of his

wife defendant No. 2 which is the result of fraud, collusion, misrepresentation and without consideration. Agreement in favour of defendant No. 2 came to knowledge of plaintiffs only on 14.1.2009. The defendants in collusion with each other are threatening to dispossess the plaintiffs from suit property forcibly, illegally and unlawfully and they are further threatening to alienate the suit property to defeat rights of the plaintiffs. They prayed for grant of permanent injunction restraining the defendants from interfering in their peaceful possession or to alienate/sell/transfer the suit property to anybody except the plaintiffs.

The defendants filed joint written statement and raised preliminary objections regarding maintainability, locus standi and cause of action. It is alleged that suit property is ancestral house of the defendants and their son namely Sandeep Kumar. Defendant No. 1 is habitual drunkard. Defendant No. 2 had apprehension in her mind that defendant No. 1 may dispose of the suit property to satisfy his lust for liquor. To prevent defendant No. 1 from doing so, defendant No.2 has obtained agreement to sell in her favour from defendant No. 1 on 1.8.2007 of which all the neighbours including plaintiffs were very much aware. The plaintiffs tried their level best to purchase the suit property from defendant No. 2 but could not succeed. Taking advantage of bad habit of defendant No. 1, they have succeeded to obtain agreement to sell and receipt dated 4.12.2008. They have denied that the plaintiffs are in possession of the suit property with the averments that plaintiffs are trying to dispossess the defendants from suit property without any right, title or interest.

The trial court framed issues, reproduced in para 3 of the

judgment of said court. Parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial court formulated two questions for decision, detailed in para 15 of the judgment. However, the trial court decided only second question with regard to entitlement of the plaintiffs to seek injunction on the basis of agreement to sell Ex. PW3/A and answered the same against the plaintiffs with the observations that as the plaintiffs have proper remedy to file suit for specific performance but have instead filed suit for permanent injunction, the same is not maintainable and plaintiffs are not entitled to injunction.

The Court in Appeal, rejected claim for grant of injunction primarily on the ground that agreement of sale Ex. PW3/A records the factum of payment of total sale consideration of Rs. 80,000/- and delivery of possession of suit property in favour of the proposed vendee but since the document is not a registered deed, the same can not be taken into consideration for collateral purpose i.e. possession of plaintiffs over the suit property, therefore, the plaintiffs cannot protect their possession on the basis of unregistered agreement of sale.

Counsel for the appellants-plaintiffs has submitted that both the courts have not doubted that the plaintiffs are in possession of suit property on the basis of agreement of sale dated 4.12.2008 marked as Ex. PW3/A. It is further argued that the mere fact that agreement is not a registered document would neither deprive the plaintiffs to protect their possession against forcible dispossession nor would enure to benefit of the respondents to take law in their hands and dispossess the plaintiffs except in due course

of law. It is further argued that even if the plaintiffs have not availed remedy seeking specific performance of agreement of sale despite a cause of action in this regard having accrued to them as has been held by the courts, the same may create a bar on their seeking specific performance of agreement of sale but would not deprive them of protecting their possession except in due course of law. In the alternative, it has been argued that in case defendant No. 1 owner of the suit property files suit for possession, the plaintiffs may not be entitle to protect their possession under the guise of Section 53-A of the Transfer of Property Act, 1882 (in short "TP Act") as agreement of sale is not a registered document but that itself would not stand in their way to protect their possession against forcible , illegal and unlawful act of the defendants-respondents.

Counsel representing the respondents-defendants, on the contrary, has supported the judgments passed by the courts with the submission that unregistered agreement of sale cannot be relied upon for any purpose whatever, therefore, the courts have rightly refused to allow equitable and discretionary relief of injunction in favour of plaintiffs-appellants.

I have heard counsel for the parties and perused the paper book particularly the judgments impugned.

As has been noticed hereinbefore, the trial court formulated two questions but answered only second question and did not advert to the first question namely whether defendant No. 1 was competent to enter into an agreement to sell dated 4.12.2009 Ex. PW1/A as it is claimed by defendant No. 2 that before executing the agreement Ex. PW3/A, defendant No. 1

had transferred the suit property in favour of defendant No. 2 vide agreement dated 1.8.2007 and there is evidence that suit property was inherited by defendant No. 1 along with brothers and sisters from his father Dala Ram.

Perusal of judgment passed by the Appellate Court would reveal that the court has not rejected agreement dated 4.12.2008 Ex. PW3/A on the ground of validity. On the contrary, the court refused to rely upon the agreement on the ground that the same is not a registered document. There is no such findings recorded by the Appellate Court that the appellants have not been able to prove their possession of the suit property. No sooner the appellants are successful to prove their settled possession over the suit property, may be, under an agreement of sale executed by the contesting party, they can protect their possession except in due course of law. It may be true that in case defendant No. 1, on the basis of ownership, files a suit for recovery of possession of suit property, the appellants-plaintiffs may not be entitle to protect their possession under Section 53-A of TP Act as agreement of sale is unregistered and was executed subsequent to amendment in the Indian Registration Act whereby Section 17(1A) was incorporated and Section 49 thereof was amended. At the same time, even if cause of action to file a suit for specific performance had accrued to the appellants but they instead of availing the remedy of specific performance had filed a suit for injunction to protect their possession against forcible dispossession, they are entitle to seek relief of injunction by proving that they are in settled and permissive possession of the suit property. In this context, reference can be made to judgment of this court **Hanuman and**

others vs. Rajesh Kumar and others 2012(34) RCR (Civil) 849 wherein it has been held that “protection under Section 53-A is claimed by prospective vendee as defendant. In the instant case, however, the plaintiff himself filed the suit and claimed permanent injunction, therefore, question of applicability of Section 53-A of TP Act does not arise. On the other hand, plaintiff's possession over the suit plot has been protected only to a limited extent that he should not be dispossessed therefrom except in due course of law. Defendants, even as legal heirs of Shanti who was owner of the suit plot cannot dispossess the plaintiff from suit plot except in due course of law. Possession of the plaintiff was duly proved, as also recited in the impugned agreement, execution whereof has been proved by the plaintiff”. In view of the above, findings recorded by the Appellate court declining relief of injunction merely because agreement to sell is not a registered document suffer from serious error, thus, cannot be allowed to sustain. Similarly, findings of the trial court on question No. 2 with regard to the appellants being not entitle to injunction against dispossession on account of their failure to avail remedy of specific performance of agreement to sell despite accrual of cause of action cannot be upheld when examined in the light of **Hanuman and others' case (supra)**. Since the appellants-plaintiffs have been proved to be in settled possession of suit property, they are entitle to protect their possession except in due course of law. Accordingly, the judgments and decrees passed by the courts are set aside to the aforesaid extent. The suit filed by the appellants is partly decreed to the effect that the respondents are restrained permanently from interfering in possession or dispossessing the appellants from suit property

except in due course of law.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

3.7.2019
PARAMJIT

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