

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

RSA No.3817 of 2018 (O&M)
Date of Decision: April 10, 2019

Seeto

...Appellant

Versus

Ruldu Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. L.S. Sidhu, Advocate
for the appellant.

JAISHREE THAKUR, J. (Oral)

1. The instant regular second appeal has been filed against the judgment and decree dated 13.04.2018 passed by the lower Appellate Court whereby, the appeal filed by the appellant-plaintiff against the judgment and decree dated 01.10.2016 passed by the lower court has been dismissed.
2. In short, the facts of the case are, that the appellant-plaintiff filed a suit for permanent injunction stating that Kanda son of Bhana resident of Village Alipur, Tehsil Zira was owner in possession of the plot measuring 05 marlas, as detailed in the headnote of the plaint, who on 24.08.2005, sold the said plot to Gulab Singh, husband of the appellant-plaintiff for a total consideration of ₹ 12,500/- and delivered the possession of the plot to the appellant-plaintiff. It is averred that a writing to this effect was duly recorded and it was duly thumb marked by Kanda and

witnessed by Satpal Singh and Kala Singh, apart from husband of the appellant-plaintiff. Thereafter, Gulab Singh, husband of the appellant-plaintiff constructed two rooms, boundary walls etc. and since the date of purchase, the appellant-plaintiff and her husband Gulab Singh were in peaceful possession of the suit property. It is submitted that Gulab Singh is bed ridden due to long illness and he is unable to move, so the appellant-plaintiff is filing the present suit. It is stated that said Kanda has died in the year 2006, but respondent No.1/defendant No.1 alleged that he has purchased the plot in dispute from Paramjit Kaur daughter of Kanda, rather, Paramjit Kaur has no right to sell the plot in question. Paramjit Kaur (daughter of deceased Kanda) was not competent to sell the plot measuring 5 marlas in any manner, because Kanda had already sold the same to Gulab Singh, husband of the appellant-plaintiff and it was in the knowledge of Paramjit Kaur and all the respondents-defendants that Kanda had himself delivered the possession of the plot in question to Gulab Singh, husband of the appellant-plaintiff. It is alleged that taking undue advantage of the illegal sale deed and mutations, the respondents-defendants want to dispossess the appellant-plaintiff from the suit property. Hence, the present suit.

3. Upon notice, the respondents-defendants appeared and filed their written statement, while taking the preliminary objection as to maintainability of the suit. It is submitted that the appellant-plaintiff is neither owner nor in possession of the suit property. The appellant-plaintiff could file the suit for specific performance only within the period of 03 years from the alleged date of execution of agreement i.e. 24.08.2005, so the

suit is not maintainable on the basis of unregistered document. It is further submitted that the appellant-plaintiff has no cause of action to file the present suit. In the alleged agreement dated 24.08.2005, the name of vendees mentioned as Gulab Singh son of Noora r/o village Alipur, the said Gulab Singh has an other house in the village. Gulab Singh is a healthy person and is aged about 42 years. The appellant-plaintiff has left her husband Gulab Singh. Only Gulab Singh is entitled to file any suit on the basis of alleged agreement. The appellant-plaintiff has no right to file the present suit. The alleged agreement dated 24.08.2005 is forged, false, fabricated and antedated document prepared by the appellant-plaintiff in connivance with witnesses and scribe. There is a cutting on the date and witness of the agreement mentioned on the alleged agreement, which proves the alleged agreement is ante dated document. Kanda son of Bhana never entered into any agreement of sale with the appellant-plaintiff or Gulab Singh and he never delivered the possession to them. The stamp paper is allegedly purchased on 24.03.2005 and the digit '5' has been over written as '8' in the date of execution of alleged agreement. No injunction can be granted against the true owner. It is submitted that Kanda was the owner of the plot measuring 5 marlas and he has died and mutation No.2363 regarding inheritance of Kanda has been sanctioned in favour of his daughter namely Paramjit Kaur and is duly incorporated in the revenue record. After the death of above said Kanda, Paramjit Kaur came into possession of the plot in dispute as an owner and she sold the plot in dispute to respondent No.3/defendant No.3 for a total sale consideration of ₹ 75,000/- vide sale deed dated 31.1.2012. The sale deed was scribed by Brij

Mohan, Document Writer Zira and witnessed by Resham Singh Namberdar, village Alipur and Jaswant Singh, Ex-Sarpanch of the village and thereafter, the sale deed was registered in the office of Sub Registrar, Zira vide Vasika No.3965 and Paramjit Kaur delivered the possession of the said plot to respondent No.3/defendant No.3 at the time of execution of the sale deed dated 31.12.2012. On the basis of this sale deed, the mutation No.2385 has been sanctioned in favour of respondent No.3/defendant No.3, so respondent No.3/defendant No.3 has become absolute owner in possession of the plot in dispute. Respondent No.3/defendant No.3 has already constructed his residential house on the said plot and is residing with his family members in the said house. The suit land is bearing khasra number, but no khasra number is mentioned in the alleged agreement dated 24.08.2005. Rest of the averments were denied.

4. Replication to the written statement was filed and from the pleadings of the parties, following issues were framed;-

1. Whether the plaintiff is entitled to relief of permanent injunction as prayed for in the plaint?OPP.
2. Whether the suit of the plaintiff is not maintainable?OPD.
3. Whether the suit is not within the period of limitation?OPD.
4. Whether the plaintiff has no cause of action to file the present suit?OPD.
5. Whether the alleged agreement dated 24.08.2005 is forged, false, fabricated and ante dated document?OPD.
6. Whether the plaintiff has not come to the court with clean hands?OPD

7. Relief.

5. In order to prove her case, the appellant-plaintiff herself stepped into the witness box as PW1, Ravinder Singh Zirvi was examined as PW2, Paramjit Kaur was examined as PW3 and Satpal Singh was examined as PW4 whereas, the respondents-defendants examined Sarabjit Singh (defendant No.3) as DW1, Jaswant Singh as DW2 and Brij Mohan as DW3.

6. After hearing both the sides, the lower court dismissed the suit of the appellant-plaintiff. The appellant-plaintiff filed an appeal before the lower Appellate Court, which also came to be dismissed. Now both the judgments and decrees passed by the courts below are under challenge in this regular second appeal.

7. Learned counsel for the appellant-plaintiff argues that both the courts below have ignored the fact that the suit on the basis of an unregistered agreement for specific purpose is maintainable under Section 53-A of the Transfer of Property Act. It is contended that both the courts below disposed of the matter in hot haste manner, causing grave miscarriage of justice. It is also argued that the judgments and decrees passed by the courts below are based upon surmises and conjectures.

8. I have heard learned counsel for the appellant-plaintiff and have perused the pleadings of the case.

9. The lower court, while dismissing the suit of the appellant-plaintiff, has observed as under:-

“10. The plaintiff seeks permanent injunction restraining the defendants from interfering and forcibly dispossessing the plaintiff and interfering in her

peaceful possession over the house measuring 5 marla shown in red colour by letters ABCD in the site plan as fully mentioned in the head note of the plaint. The suit land is comprised in numbers and in the agreement dated 24.08.2005 no numbers are mentioned. As per the agreement the husband of the plaintiff Gulab Singh alleged to be purchaser of the land, but he failed to file any suit for specific performance against the defendants rather the inheritance of Kanda was sanctioned in favour of his daughter Paramjit Kaur and she further sold the plot in favour of defendant no.3 vide sale deed dated 31.12.2012 and the defendant No.3 is in possession of the land. No construction was raised by husband of plaintiff namely Gulab Singh. As agreement to sell placed on record unregistered, no title passes to the husband of the plaintiff. The ownership of the plot in dispute denied in the plaint. The agreement in question is unregistered document. Under Section 17 (1) of Registration Act, the agreement must be registered if the possession is delivered on the basis of agreement and the unregistered agreement to sell cannot be used as defence in the terms of section 53-A of Transfer of Property Act, 1882. If the husband of plaintiff paid the whole amount of plot in dispute then why Kanda Singh has not registered the sale deed in favour of plaintiff. Moreover the agreement is not scribed by regular deed writer. Gulab Singh husband of plaintiff never filed any suit against the defendants. The suit property bears khasra number but in the agreement there is no khasra number of the plot in dispute mentioned. Paramjit Kaur executed sale deed by her free will. PW1 Seeto in her cross-examination stated that no suit for specific performance had been filed on the basis of alleged agreement dated 24.08.2005. She further stated that no suit has been filed to set aside the sale deed dated 31.01.2012. PW2 Ravinder Singh Zirvi in his cross-examination stated that he prepared the site plan Ex.P1 at his office on the instance of Seeto. He has not visited the place when he prepared the site plan. PW3 Paramjit Kaur in her cross-examination herself admitted that she put her thumb impression on the sale deed dated 31.12.2012. PW4 Satpal Singh marginal witness of the agreement in is cross-examination stated that the alleged agreement has not produced before Tehsildar. He further admitted that in the agreement Ex.P3 there is no khasra number mentioned but plot in dispute bears khasra number. The DWs appeared on behalf of the defendants and duly proved defence of the defendants and plaintiff failed to

prove her case through cogent evidence. Moreover no relief of injunction can be granted to a trespasser against the true owner in this case also the defendants proved that they are owner of the plot on the basis of registered document i.e. sale deed in favour of them. Therefore, the plaintiff is not entitled for any relief of permanent injunction. As such, issue no.1 is decided in favour of the defendants and against the plaintiff.”

10. The appeal filed by the appellant-plaintiff against the judgment and decree passed by the lower court has been dismissed, while affirming the findings recorded by the lower court.

11. In the instant case, as per Ex.D3, the property in question bears Khasra No.35//6/15 as per jamabandi for the year 2009-10 and mutation No.2363 pertaining to inheritance of deceased Kanda Singh was entered in favour of his daughter Paramjit Kaur. The said khasra number finds mention in the sale deed Ex.D1 whereas, it is not mentioned in the agreement to sell Ex.P3. Moreover, agreement to sell Ex.P3 was executed in favour of Gulab Singh, who never appeared as a witness into the witness box. The questions as to why Gulab Singh, husband of the plaintiff never filed any suit for specific performance of the agreement to sell and if Gulab Singh, husband of the plaintiff paid whole of the consideration amount, then as to why Kanda Singh did not execute a sale deed in favour of Gulab Singh, remain unexplained. Further, the appellant-plaintiff never filed any suit for setting aside the sale deed dated 31.12.2012. PW2 Ravinder Singh, who prepared the site plan Ex.P1 has stated that he never visited the place and prepared the same at the instance of the appellant-plaintiff. Paramjit Kaur in her cross-examination admitted that she had put her thumb impression on the sale deed dated 31.12.2012, which also bears her

photograph on the reverse of this document. Since on the death of Kanda son of Bhana, Paramjit Kaur had inherited the property vide mutation No.2363 and thereafter, she sold the property to respondent No.3/defendant No.3, as such, respondent No.3/defendant No.3 became lawful owner in possession of the suit property. Under these circumstances, the appellant-plaintiff has miserably failed to prove her case by leading cogent and convincing evidence.

12. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-plaintiff, which has no merit.

13. Dismissed.

April 10, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No