

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

RSA No. 4956 of 2018 (O&M)

Date of decision : January 31, 2019

Jal Singh (since deceased) through LRs

.....Appellant

Versus

Lakhwinder Kaur and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Raman Sharma, Advocate
for the appellant.

LISA GILL, J.

Appellant - plaintiff is aggrieved of judgment and decree dated 17.12.2014 passed by the learned Civil Judge (Junior Division), Karnal as well as judgment and decree dated 07.07.2017 passed by the learned Additional District Judge, Karnal.

Brief facts necessary for adjudication of the case are that plaintiff – appellant filed a suit for specific performance of contract/agreement to sell dated 23.11.2005 and further sought the relief of permanent injunction to the effect that the defendants be restrained from interfering in his peaceful possession for the shop in dispute and from alienating the shop by way of sale/lease/mortgage/transfer in favour of anybody else except the plaintiff.

It was pleaded that plaintiff and Pushpinder Singh (father of defendants No. 1 to 4) entered into an agreement to sell the shop as detailed in the plaint for a total consideration of ₹1,35,000/-. Pushpinder Singh received the total sale consideration at the time of execution of agreement to sell. Actual physical possession of the shop was handed over to the plaintiff at the time of execution of agreement to sell. It was agreed that the plaintiff

would be at liberty to get the sale deed of shop in question executed in his favour at any time and no date was fixed for execution of sale deed. Readiness and willingness on the part of the plaintiff - appellant was pleaded while submitting that Pushpinder Singh was not ready and willing to perform his part of the contract. After the death of Pushpinder Singh his legal heirs i.e. defendants No. 1 to 4 also remained postponing the matter on one pretext or other and ultimately refused to get the sale deed of shop executed in favour of the plaintiff. Hence, the present suit was filed.

Respondent – defendants contested the suit. Defendants No. 1 and 3 filed a joint written statement resisting the plaint. Defendant No. 2 filed a separate written statement while defendant No. 4 adopted the written statement filed by defendants No. 1 and 3 on 03.05.2010. Defendant No. 5 was impleaded as a party to the suit on an application under Order 1 Rule 10 CPC filed by the plaintiff. It is denied that Pushpinder Singh entered in an agreement to sell dated 23.11.2005 with the plaintiff. It was further stated that the plaintiff was in possession of the shop in question being run in the name and style of Indian Sports but the plaintiff was in occupation of the same as a tenant, earlier under one Arshdeep Singh and now under defendant No. 5. It is further stated that the premises had been sublet by the plaintiff to Kulbir Singh. It was claimed that the plaintiff was in physical possession of the shop in the capacity of a tenant and not as a prospective vendee. Arshdeep Singh was claimed to be the owner of the suit property and not Pushpinder Singh. Dismissal of the suit was prayed for. Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

i) Whether the plaintiff is entitled to a decree for specific

performance of the contract dated 23.11.2005 with respect to the shop in dispute measuring 10' x 18' situated in Ward No. 6, Takia Chowk, near Girls School, Gharaunda Tehsil Gharaunda District Karnal, fully detailed in para no. 2 of the plaint, as prayed for?OPP.

- ii) Whether the plaintiffs are entitled to consequential relief of permanent injunction restraining the defendants permanently from interfering with the peaceful possession of the plaintiff and restraining from alienating the shop in dispute by way of sale/lease/mortgage and transfer in any manner?OPP
- iii) Whether the present suit is not maintainable in the present form? OPD.
- iv) Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD.
- v) Whether the present suit is time barred?OPD
- vi) Whether the present suit is bad for misjoinder and nonjoinder of necessary parties?OPD
- vii)Relief.

Evidence was led by both the parties.

Learned trial Court on consideration of the evidence on record, facts and circumstances concluded that agreement to sell dated 23.11.2005 (Ex.PW2/B) was in fact not an agreement to sell. The shop in question was given to the plaintiff for a period of three years w.e.f. 23.11.2005 to 22.11.2008. It was mentioned in the said agreement that after expiry of the said period of three years, the shop would be vacated and in case Pushpinder Singh, the alleged vendor wished to give the same to the plaintiff again for any further period, the shop would be taken within the specified period. As far as sale deed dated 26.05.2010 in favour of defendant No. 5 is concerned, it was concluded that the sale deed having been executed during the pendency of the present suit, defendant No. 5 could not be said to be a bona fide purchaser. It was further observed that

there is no evidence on record to show that Pushpinder Singh was the exclusive owner of the property in dispute, having the authority to sell the property in dispute. Accordingly, the plaintiff was denied the relief of specific performance of agreement to sell dated 23.11.2005. However, the plaintiff's suit was partly decreed to the extent that the defendants were restrained from interfering in the peaceful possession of the property except in due course of law.

Appeal filed by the plaintiff – appellant was partly allowed by the learned Additional District Judge, Karnal vide impugned judgment and decree dated 07.07.2017 while holding document dated 23.11.2005 to be a mortgage deed. Appellant – plaintiff was held entitled to recovery of ₹1,35,000/- from defendants No. 1 to 4, who are the legal heirs of Pushpinder Singh. However, he was not held entitled to any interest as the plaintiff was admittedly in possession of the property in question. It was further observed by the learned Additional District Judge, Karnal that defendant – respondent No. 5 has no right to dispossess the appellant – plaintiff from the shop in question except in due course of law. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that as per the evidence on record, it is duly proved that agreement dated 23.11.2005 is indeed an agreement to sell the property in question. All the ingredients thereof have been duly proved. It is vehemently argued that the subsequent narration in agreement to sell dated 23.11.2005 regarding possession of the shop being given to the plaintiff for a period of three years and vacation of the same thereafter is irrelevant. Total sale consideration of ₹1,35,000/-

was admittedly paid by the plaintiff. Actual physical possession of the shop in question was delivered by the original vendor Pushpinder Singh during his life time. Plaintiff was always ready and willing to get the sale deed executed in his favour. The plaintiff has testified himself to substantiate his case. PW2 Mohinder Singh, an attesting witness has duly proved execution of the agreement to sell (Ex.PW2/B). It is further argued that the learned trial Court has concluded agreement dated 23.11.2005 to be a lease deed whereas paradoxically learned Additional District Judge, Karnal has held the same to be a mortgage deed. Contrary findings have been returned, both of which are incorrect. Document dated 23.11.2005 is in fact an agreement to sell the shop in question. Moreover, once the learned trial Court held that sale deed dated 26.05.2010 in favour of defendant No. 5 has no value, the sale having been carried out during the pendency of the present proceedings and thus, hit by doctrine of lis pendens, learned Additional District Judge, Karnal by observing that defendant – respondent No. 5 has no right to dispossess the appellant – plaintiff from the shop in question except in due course of law has returned a finding in favour of defendant No. 5 without her even challenging the said finding. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 17.12.2014 passed by the learned Civil Judge (Junior Division), Karnal as well as judgment and decree dated 07.07.2017 passed by the learned Additional District Judge, Karnal be set aside to the extent that the decree of relief of specific performance of agreement to sell dated 23.11.2005 has not been afforded and a right has been conferred on defendant No. 5.

I have heard learned counsel for the appellant and have perused the file with his able assistance.

Perusal of agreement dated 23.11.2005 (Ex.PW2/B) reveals

that it is mentioned therein that the shop in question was owned by Pushpinder Singh and he agreed to sell the said shop for a total consideration of ₹1,35,000/-, which was received at the time of the execution of the agreement to sell. As and when the plaintiff would desire, Pushpinder Singh it is mentioned, would get the sale deed registered in his favour and in case the sale deed is not executed then Pushpinder Singh would be liable to pay ₹2,70,000/-. It is to be noted that a hand written line has been inserted at this place that in case the premises are vacated before the stipulated period, a sum of ₹2,70,000/- would be paid. It is thereafter stated in the said agreement that possession of the shop has been given to the Plaintiff – Jal Singh for a period of three years i.e. 23.11.2005 to 22.11.2008. After expiry of this period of three years the shop would be vacated and in case Pushpinder Singh wished to give the premises to Jal Singh for further period, the shop will be taken within the period specified. The shop, it is stated, was given to the plaintiff for carrying out the business of sports goods or any other kind of shop and the first party i.e. Pushpinder Singh would not have any objection.

It is apparent that the intention of the parties was not sale of the property in question. In such a situation, it is not possible that a clause regarding vacation of property would be inserted and that too for vacation after a specified period of three years. PW2 Mohinder Singh, the attesting witness stated the document to be a rent agreement. The contradictions in the evidence led by the plaintiff definitely create a material dent on the plaintiff's case. The word 'Sale (*Baay*)' in the head of the agreement (Ex.PW2/A) has been cut leaving the word 'agreement'. It is rightly held by the learned courts below that the intention of the parties in this case was not

sale of the property.

Learned Additional District Judge, Karnal while referring to Section 58(d) of the Transfer of Property Act, 1988 concluded that the document (Ex.PW2/B) was executed by way of usufructuary mortgage, thereby holding that the appellant – plaintiff was entitled to recovery of ₹1,35,000/-.

Argument vehemently urged by learned counsel for the appellant is that both the learned courts below have returned contradictory conclusions to the effect that the document dated 23.11.2005 is a lease deed while learned Additional District Judge, Karnal has held it to be a mortgage deed. It is pertinent to note that this fact by itself is not sufficient to afford any relief to the appellant. Needless to say perusal of agreement to sell dated 23.11.2005 (Ex.PW2/B) reveals that the same is not an agreement to sell the property in question. Relief of specific performance of agreement dated 23.11.2005 has been rightly declined by both the learned courts below. Relief of permanent injunction restraining the defendants from interfering in the possession of the appellant – plaintiff except in due course of law has been afforded. It is apparent that the question of title of the property is not the subject matter of adjudication in the present proceedings. It is informed that defendant No. 5 has initiated proceedings on the basis of sale deed dated 26.05.2010 (Ex.DW4/A). The plaintiff is stated to be a party to the said proceedings. Rights of the parties in respect to sale deed dated 26.05.2010 in favour of defendant No. 5, are the subject matter of the proceedings instituted by defendant No. 5 which are admittedly pending. Observations made in the present proceedings regarding her being a bona fide purchaser or not, are confined to the facts of this case and for the

adjudication of the present matter. It cannot be said that due to the observation of the learned Additional District Judge, Karnal that defendant No. 5 has no right to dispossess the plaintiff – appellant from the shop in question except in due course of law has vested defendant No. 5 with specific rights. Needless to say, the same are subject matter of the proceedings admittedly pending between the parties.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 17.12.2014 passed by the learned Civil Judge (Junior Division), Karnal as well as judgment and decree dated 07.07.2017 passed by the learned Additional District Judge, Karnal. which calls for any interference by this Court in second appeal.

There is a delay of 14 days in filing and 268 days in re-filing of the present appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is, accordingly, disposed of.

Accordingly, this appeal is dismissed with no order as to costs.

(Lisa Gill)
Judge

January 31, 2019

rts

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