

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

RSA-5539-2018(O&M)

Date of decision:-5.9.2019

Nirmal Kaur

...Appellant

Versus

Gian Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Malkeet Singh, Advocate
for the appellant.

H.S. MADAAN, J.

Plaintiff Nirmal Kaur had brought a suit against defendants – Gian Kaur, Amar Kaur, Kuldeep Singh, Pardeep Singh, Kulvir Singh, Amrik Singh, Manjit Kaur, Paramjit Kaur and Daljit Kaur seeking a declaration that she is owner of the suit property 0 kanal 5 marlas being 5/56 share of the land measuring 2 kanals 16 marlas coming to share of defendants comprised in Khewat No.148/139, Khatauni No.200, Khasra No.47//26(2-16) situated within the revenue limits of village Kangror, Tehsil Banga, District

SBS Nagar as per jamabandi for the year 2008-09 being vendee for consideration on the basis of sale deed executed between the parties on 26.5.2014, which had not been registered due to fault of defendants and seeking a direction to the defendants to get the sale deed registered in favour of the plaintiff; in addition to that seeking relief of permanent injunction restraining the defendants from alienating or transferring the suit property to anybody else and from interfering in the suit property in any manner.

On being put to notice, the defendants appeared and offered a contest. Issues on merits were framed. The parties were afforded adequate opportunities to lead their evidence.

After hearing the learned counsel for the parties, the trial Court vide judgment and decree dated 21.1.2016 dismissed the suit. The reason for dismissal of the suit was that though in pursuance of the oral agreement, the defendants had executed the sale deed Ex.P1 in favour of the plaintiff but that sale deed is not a registered document and in terms of Section 17(1)(b) of the Registration Act, 1908, any instrument purporting to create any right, title or interest of value of Rs.100 and upwards in immovable property is compulsorily registrable. Whereas Section 49 of that very Act provides that no document, which is required by Section 17 of the Act to be registered shall affect any immovable property or would be received as evidence of any transaction affecting such property, unless it has

been registered. Therefore, the sale deed Ex.P1 being an unregistered document did not carry any legal value and title was not transferred from defendants to plaintiff, therefore, she cannot claim a declaration that she is owner of the suit property on the basis of sale deed Ex.P1, which is unregistered document.

The relief of mandatory injunction seeking issuance of direction to the defendants to execute the sale deed in favour of plaintiff was declined in view of Section 41(h) of the Specific Relief Act, 1963 providing that no injunction or direction is to be issued in favour of a party, in case, the party is having an equally efficacious remedy available with him and in the instant case the remedy available with the plaintiff was to seek specific performance of agreement to sell instead of seeking issuance of direction to the defendants to get the sale deed registered.

Relief of permanent injunction was declined to the plaintiff holding that the agreement on the basis of which possession is claimed by the plaintiff required compulsory registration since possession was allegedly delivered as part performance of agreement. In this case Ex.P1 was not registered, therefore in view of Section 41(h) of Specific Relief Act, 1963, relief of injunction could not be granted to the plaintiff.

Feeling aggrieved by such judgment and decree passed by the trial Court, the plaintiff had filed an appeal before District

Judge, SBS Nagar, which was assigned to Additional District Judge, SBS Nagar and the same was dismissed vide judgment and decree dated 27.2.2018 upholding the judgment and decree passed by the trial Court and rejecting the contentions raised by the plaintiff/appellant.

It may be mentioned here that during pendency of the appeal, the appellant/plaintiff had moved an application under Order 6 Rule 17 CPC for amendment of the plaint claiming relief of specific performance and deleting names of some defendants along with amendment as regarding their share of land. That application was dismissed by the First Appellate Court. The First Appellate Court had observed that oral agreement as well as unregistered sale deed do not confer any right in view of Sections 54 and 55 of the Transfer of Property Act, though the unregistered sale deed of immovable properties is admissible as evidence to prove agreement to sell. Learned Additional District Judge, SBS Nagar had referred to judgment *Suraj Lamp and Industries Pvt. Ltd. Versus State of Haryana and another, 2011(4) RCR(Civil)669* by Hon'ble Apex Court dealing with Sections 53-A, 54 and 55 of the Transfer of Property Act.

Being dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has filed the present Regular Second Appeal before this Court.

I have heard learned counsel for the appellant besides going through the record and I find that there is absolutely no merit in the appeal.

The concurrent findings on the issues so recorded do not suffer from any irregularity or illegality. The findings are affirmed. No fault is found with the judgments and decrees passed by the Courts below. Those are upheld.

No substantial question of law arises in this appeal.

Finding no merit in the appeal, the same stands dismissed accordingly.

5.9.2019
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No