

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

**RSA-6374-2018 (O&M)
Date of Decision: September 26, 2019**

Heera Lal (deceased) through LRs

...Appellants

Versus

Smt. Mahendri and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.

Present: Mr. B.S. Tewatia, Advocate,
for the appellants.

ARUN PALLI, J. (ORAL)

The suit filed by the appellant-plaintiff was decreed by the Trial Court, vide judgment and decree, dated 28.10.2017. For the appeal preferred against the said decree was accepted, and the judgment rendered by the Trial Court was reversed, the appellant-plaintiff through his LRs are before this Court in Regular Second Appeal. Parties to the *lis*, hereinafter shall be referred to by their original position in the suit.

The plaintiff prayed for a decree for mandatory injunction directing the defendants to vacate the suit land and handover it's actual physical possession to the plaintiff.

In brief, the case set out by him was that he was owner in possession of the suit property, and about 2-1/2 years prior to the institution of the suit, defendant No. 1 requested the plaintiff to permit her to use the said plot for keeping her livestock and fodder etc. Considering the relations between the plaintiff and defendant No. 1, the said plot was given

to defendant No. 1 for usage for a period of two years. For, subsequently defendant No. 1 refused to vacate and handover the physical possession of the suit property to the plaintiff, thus, the suit.

In defence, the defendants pleaded, *inter alia*, that plaintiff being the owner in possession of the suit property had entered into an agreement to sell, dated 10.07.2007, with defendant No. 2-Laxman, for a sale consideration of Rs.2,00,000/-. A sum of Rs.1,18,000/- were received by the plaintiff as earnest money, against a separate receipt executed by him. The balance sale consideration was to be paid at the time of execution and registration of the sale deed, on or before 09.01.2008. Subsequently, the plaintiff also received a further sum of Rs.72,000/- from defendant No. 2 on 15.11.2007, for which he executed a separate receipt, and delivered possession of the suit property.

The Trial Court, on a consideration of the matter held that agreement to sell does not convey any title or ownership in the suit property, except a right to avail the remedy of specific performance of the contract. The defendants at no point of time instituted a suit seeking a decree for specific performance, on the basis of the alleged agreement, therefore, the benefit of the provisions of Section 53-A of the Transfer of Property Act, 1882, to protect their possession would not enure to their advantage. Accordingly, the suit was decreed.

However, in the appeal preferred by the defendants, the first Appellate Court, upon a comprehensive analysis of the issue and the evidence on record, concluded that Laxman (DW-1) appeared in support of

his case and testified in his deposition that plaintiff being the owner of the suit property, executed the agreement dated 10.07.2007, in favour of the defendants for a consideration of Rs.2,00,000/-. He received a sum of Rs.1,18,000/- as earnest money, for which he executed a separate receipt in presence of the witnesses. He (DW-1) proved the copy of the original agreement to sell (Ex. D1) in his testimony as also the receipt (Ex. D-2) for Rs.1,18,000/-. Perusal of both the documents revealed that those were attested by two witnesses, namely, Jai Singh son of Umed Singh and Sunni Pol son of late Shri Pol. The defendants examined Jai Singh (DW-2), who testified in his deposition that plaintiff-Heera Lal had agreed to sell the suit property to defendant No. 1-Laxman for Rs.2,00,000/- on 10.07.2007, and had received Rs.1,18,000/- as earnest money. He also proved his signatures upon the agreement as also the receipt. Laxman (DW-1) also proved the receipt (Ex.D-3), attested by Jai Singh and Sunni, vide which a further sum of Rs. 72,000/- were received by the plaintiff on 15.11.2007. Further, an analysis of the said receipt revealed that on receiving Rs.72,000/-, the plaintiff-Heera Lal delivered possession of the suit property to Laxman. Jai Singh (DW-2), who happened to be the attesting witness of the said receipt, proved its execution in his statement. However, the balance amount of Rs.10,000/- was agreed to be paid at the time of registration of the sale deed.

Significantly, plaintiff-Heera Lal appeared in support of his case as PW-1, and tendered his affidavit Ex.PW1/A, but never presented himself for cross-examination, for, in the meanwhile he had passed away.

Undoubtedly, the last date for execution and registration of the sale deed was 09.01.2008 and defendant-Laxman conceded in his cross-examination that he did not file any suit seeking specific performance of the contract. Therefore, it was proved that defendant-Laxman was in possession of the suit property in part performance of the agreement to sell dated 10.07.2007 (Ex. D-1), delivered on payment of Rs.72,000/- on 15.11.2007 against receipt (Ex.D-3). In the wake of the evidence on record, the claim of the plaintiff that possession of the suit property was delivered to defendant No.1 merely because the parties were related to each other, was vitiated. As regards the issue if the plaintiff was entitled to a decree for mandatory injunction to obtain possession of the suit property, the Appellate Court, in reference to the provisions of Section 53-A of the Transfer of Property Act, 1882, concluded that said provision clearly envisaged that transferee is entitled to resist any attempt on the part of transferor to disturb the lawful possession of the transferee under the contract of sale. A transferee was entitled to protect the said possession be that as plaintiff or a defendant. In the matter in hands, the defendant Laxman being a transferee under agreement to sell (Ex. D-1) and having paid substantial sale consideration, i.e. Rs.1,90,000/-, out of the total sale consideration of Rs.2,00,000/-, and having been put in possession of the suit property by the plaintiff, pursuant to the agreement, was entitled to protect his possession. Thus, the only and the inevitable conclusion the Court could reach was: suit filed by the plaintiff was liable to be dismissed.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusions recorded by the first Appellate Court were either contrary to the record or suffered from any material illegality. Thus, no ground is made out to interfere with the findings recorded by first Appellate Court. The appeal being devoid of merit is accordingly dismissed.

(ARUN PALLI)
JUDGE

September 26, 2019

Pk Kapoor

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO