

In the High Court of Punjab and Haryana at Chandigarh

RSA- 9746 of 2018 (O&M)

Date of Decision: 13.2.2020

Harminder Pal

---Appellant

versus

Chamkaur Lal and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Ramesh Sharma, Advocate
for the appellant**

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for possession of house measuring 6 marlas, detailed in head note of the plaint, was decreed by the trial court vide judgment and decree dated 17.2.2017 that came to be affirmed in appeal by the Additional District Judge, Kapurthala vide judgment and decree dated 5.7.2018.

Briefly stated, case of the respondents-plaintiffs is that they purchased suit property from its previous owner vide registered sale deed dated 26.9.2008 and mutation was also sanctioned on the basis of sale deed. After execution of sale deed, the appellant-defendant entered into agreement to sell the property in dispute. He failed to get the sale deed executed and registered as per agreed terms. Vide agreement dated 16.4.2009, a fresh agreement was executed between the parties with regard to cancellation of previous agreement dated 11.10.2008 whereby the appellant agreed to

deliver vacant possession to the plaintiffs before 26.4.2009 but failed to do so. The plaintiffs served notice upon the defendant-appellant to deliver vacant possession of the house in dispute to which reply was sent by the appellant but he did not deny execution of agreement as well as cancellation of agreement.

Counsel for the appellant would argue that appellant denied execution of agreement of sale/purchase dated 11.10.2008 and agreement dated 16.4.2009 whereby previous agreement dated 11.10.2008 was purported to be cancelled. It is further argued that an agreement for sale of suit property was executed by Deepak Kanda attorney of Anil Gupta and on the basis thereof, Parveen Bala filed suit for specific performance of agreement to sell which was dismissed by the trial court but appeal against judgment passed by the trial court is pending decision. It is further argued that in case the respondents-plaintiffs are successful in obtaining possession of the suit house during pendency of appeal in litigation initiated by Parveen Bala in which the respondents-plaintiffs of the present suit have been impleaded on the array of defendants, it would be of serious consequence.

Counsel, in response to a query, would inform that Parveen Bala filed the suit seeking specific performance of agreement to sell dated 31.5.2008 in the year 2011 that has been dismissed by the trial court. He has failed to point out the date when the appellant caused appearance in the present suit for possession instituted in November 2009. However, he would inform that written statement was filed on 5.5.2010.

Perusal of judgment of Appellate Court would reveal that in para 31 thereof, the court has held that neither of the alleged agreement to sell propounded by either of the parties is registered one, therefore, the

same can not be taken into consideration for the purpose of possession by either of the parties by virtue of Sections 17 and 49 of the Registration Act. Further held that though it is a different matter that plaintiffs have admitted possession of the defendant over the property in dispute.

The aforesaid observations may not be assailable at the behest of respondents who are eventually successful in the litigation. However, indisputably, agreement dated 31.5.2008 has not been propounded by the appellant but the same has been propounded by his wife, therefore, appellant otherwise can not derive any advantage thereof to invoke the provisions of Section 53-A of the Transfer of Property Act. So far as agreement dated 16.4.2009 set up by the respondents is concerned perusal thereof makes it evident that the same does not require registration and can be read in evidence. By way of agreement marked as Ex. P3, the appellant agreed to deliver possession of the suit house by a particular date and he was to be paid balance amount out of Rs. 24 Lakh after adjusting Rs. 18 lakh with interest @ 2% per month for a period of 8 months and failing to deliver possession by the stipulated date would entail adverse consequence qua right of appellant to recover any amount. In this view of the matter, it can safely be held that aforesaid findings of the Appellate Court in respect of agreement dated 16.4.2009 can not stand the test of judicial scrutiny.

The respondents-plaintiffs examined Bias Lal PW4 attesting witness of agreement dated 16.4.2009 marked as Ex. P3. Counsel has failed to point out any facts elicited in cross examination of Bias Lal to prove that his testimony is not worthy of credence and reliance or is otherwise not sufficient to prove agreement dated 16.4.2009. The appellant, except his

bald statement, did not adduce any evidence to establish that agreement dated 16.4.2009 does not bear his signatures or thumb impressions. As the appellant failed to counter statement of Bias Lal PW4 and consequently plea of the respondents-plaintiffs that he (appellant)executed agreement dated 16.4.2009 Ex. P3 agreeing to deliver possession of suit house by a stipulated date when otherwise sale deed executed in favour of respondents-plaintiffs is admitted even in the suit for specific performance filed by Parveen Bala wife of the appellant, it is difficult to accept contention of the appellant that concurrent factual findings suffer from an error much less perversity that would call for intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall cause prejudice to right of Parveen Bala qua litigation initiated by her seeking specific performance of agreement to sell dated 31.5.2008 in respect whereof suit was instituted in the year 2011, during pendency of present suit filed in the year 2009.

(Rekha Mittal)
Judge

13.2.2020
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No