

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

CR-826-2021

Date of Decision:06.04.2021

Shish Pal

...Petitioner

Versus

Kuldeep Singh

....Respondent

CORAM: HON'BLE MR JUSTICE ARUN MONGA

Present: - Mr.K.S. Dhaliwal, Advocate,
for the petitioner.

ARUN MONGA, J. (ORAL)

Instant petition arises out of an order dated 03.12.2019 passed by the learned District Judge whereby, an appeal filed by the respondent/plaintiff against an order dated 05.09.2018 passed by the trial Court allowing the application filed by the petitioner/defendant under Order 7 Rule 11 of the CPC for rejection of the plaint, has been allowed.

2. The objection of the petitioner invoking Order 7 Rule 11 of the CPC is that the entire case of the respondent is based on an un-registered mortgaged deed which cannot be *ex facie* looked into by the trial Court in view of an express bar envisaged under Section 59 of the Transfer of Property Act, 1882 read with Section 49 of the Registration Act, 1908.

3. Learned counsel for the petitioner contends that the trial Court had, therefore, rightly accepted the application filed by the petitioner. The suit filed by the respondent/plaintiff under the provisions of Specific Relief Act, 1882 is not maintainable in view of the aforesaid statutory bar.

4. I have heard learned counsel for the petitioner. Statutory bar under Section 49 of the Registration Act, 1908 does disentitle owner of the document

to produce the same for evidence on the ground of non-registration thereof. However, Sub-section (c) of Section 49, *ibid* also envisages that deficiency of non-registration can be made good at a later stage to discharge the onus of registration under the Registration Act. For ready reference relevant is reproduced herein below: -

“49. Effect of non-registration of documents required to be registered.— No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

- (a) affect any immovable property comprised therein, or*
- (b) confer any power to adopt, or*
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:*

(Emphasis Supplied)

*[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) 55, 56 [***] or as evidence of any collateral transaction not required to be effected by registered instrument.]”*

5. In any case, the objection taken under Section 59 of the Transfer of Property Act, 1882 read with Section 49 of the Registration Act, 1908 is a mixed question of fact and law to be decided at an appropriate stage after both the parties have adduced their respective evidence. Learned Appellate Court has rightly reversed the order passed by the Trial Court with following observations: -

“To my mind, the learned lower Court went wrong in rejecting the plaint on the score. While Section 59 of the Transfer of Property Act makes it mandatory for a mortgage to be effected only by a registered instrument where the principal money secured is Rs.100/- or upwards, it does not create a bar against filing of a suit based on unregistered mortgage deed affecting property worth more than Rs.100/-. Whether a document can be read in evidence for want of registration or not, is a question of evidence. It has no bearing on maintainability of suit as such. Admissibility of a document on which the suit is based, is entirely different from non-maintainability of suit due to

bar created by law. Both are different aspects which ought not be confused.”

6. In the premise, no grounds to interfere are made out. Dismissed.

06.04.2021

Vivek

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

(ARUN MONGA)
JUDGE