

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

RSA No.4566 of 2019 (O&M)

Reserved on : 27.09.2022

Date of Decision: 18.10.2022

Ram Bhagat Singh

....Appellant

VERSUS

Ashoki @ Namar & Anr.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vinod Bhardwaj, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been preferred by the plaintiff-appellant against the judgments and decrees dated 16.02.2016 and 19.08.2019 passed by the Courts below dismissing his suit for permanent injunction.

The brief facts relevant to the present *lis* are that the plaintiff-appellant filed the present suit for permanent injunction averring that the plot in dispute measuring 54.61 sq. yards was owned and possessed by one Kismat. The said Kismat sold the plot in dispute to the plaintiff-appellant vide agreement to sell dated 03.10.2011 when full payment was made and the plaintiff-appellant was also handed over the possession of the plot in dispute. As per the plaintiff-appellant the full payment agreement was witnessed by Mahabir and Sumit Kumar. It was further averred that the plot in dispute was adjoining to his house which house was in the name of the

wife of the plaintiff-appellant and that the plaintiff-appellant had laid the foundation and raised the level of the plot in dispute by filling soil. It was alleged that the defendant-respondents had no right, title and interest in the plot in dispute and wanted to forcibly and illegally encroach over the same and raise construction. Thus, the suit for permanent injunction was instituted.

In their written statement the defendant-respondents took preliminary objections regarding courts fees, cause of action, maintainability, estoppel, non-joinder and mis-joinder of necessary parties. It was stated that agreement to sell dated 03.10.2011 was false and that Kismat Singh had no title to sell the plot in dispute in favour of the plaintiff-appellant. As per the defendant-respondents, the defendant-respondent No.1 was in possession of the plot in dispute because the same was agreed to be sold to her by its previous owner Rajesh Kumar vide agreement to sell dated 10.11.2010 and that complete payment had also been made. It was also stated that a suit for injunction was also filed by defendant-respondent No.1 against Rajesh Kumar qua the plot in dispute which suit was decreed in favour of defendant-respondent No.1. It was denied that the plaintiff-appellant was in possession of the plot in dispute.

On the basis of the pleadings of the parties, the Trial Court framed the following issues :

1. Whether plaintiff is entitled to relief of injunction as prayed for ? OPP
2. Whether plaintiff has got no cause of action and locus standi to file the present suit ? OPD

3. Whether the suit of plaintiff is not maintainable in the present form ? OPD
4. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
6. Relief.

Vide judgement and decree dated 16.02.2016 the Trial Court dismissed the suit of the plaintiff-appellant. Aggrieved by the said judgment and decree, an appeal was preferred by the plaintiff-appellant which was also dismissed vide judgment and decree dated 19.08.2019. Hence the present regular second appeal.

Learned counsel for the plaintiff-appellant has contended that the Courts below have erred in dismissing his suit. According to counsel, the agreement to sell dated 03.10.2011 was proved by the scribe and the attesting witnesses which established that the plot in dispute had been sold by Kismat Singh to the plaintiff-appellant and possession was also delivered to him. It is further contended that the decision in the suit between the defendant-respondent No.1 and Rajesh Kumar was not binding on the plaintiff-appellant or Kismat Singh.

Heard.

In the present case the Courts below found that the agreement to sell dated 03.10.2011 did not give the exact area of the plot sold. There were discrepancies in the statement of the plaintiff-appellant himself. The witness who scribed the said agreement to sell admitted that there was no entry in his register regarding the same. Further, while the plaintiff-appellant

stated that the agreement to sell was hand-written, the scribe had stated that it was a typed document. The plaintiff-appellant did not examine his vendor Kismat Singh nor produced any document on the record proving the ownership of Kismat Singh over the plot in dispute. Counsel for the plaintiff-appellant has not been able to show that his vendor Kismat Singh was owner of the plot in dispute and could sell the same.

Moreover, the agreement to sell dated 03.10.2011 vide which possession was also delivered to the plaintiff-appellant is an unregistered document and such an unregistered document cannot be accepted being in contravention of the provisions of the Registration Act, 1908. It is well settled that that a transfer of immovable property by way of sale can only be by a deed of conveyance/sale deed. In **Suraj Lamp & Industries (P) Ltd. vs. State of Haryana & Anr. [(2012)1 SCC 656]** it was held :

“18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale,

whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.”

Thus, without a stamped and registered deed of conveyance/sale deed, no right, title or interest in immovable property can be transferred. Under the provisions of Section 17 of the Registration Act, 1908 where immovable property of the value of more than 100/- is conveyed, such sale could only be effected by a document of sale duly registered. Section 17(1)(b) of the Registration Act, 1908 mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered and Section 49 of the said Act imposes a bar on the admissibility of an unregistered document and deals with the documents that are required to be registered under Section 17. Section 49 of the Registration Act, 1908 reads thus :

“49. Effect of non-registration of documents required to be registered - No document required by Section 17 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:

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 (1 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.”

Since, the agreement to sell dated 03.10.2011 has the effect of creating and taking away the rights in respect of immovable property, it required registration under Section 17 of the Registration Act, 1908. Since the said agreement to sell has not been registered, it cannot be taken into account to the extent of the transfer of the immovable property mentioned therein.

In view of the above, I do not find any ground to interfere in the concurrent findings of fact returned by both the Courts below. No question of law much-less any substantial question of law arises in the present appeal. The appeal, which is wholly devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

18.10.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO