IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1644-2021(O&M)
Reserved on 07.12.2023
Date of Decision: 19.12.2023

Malkiat Singh ....Petitioner

Versus

Nitesh Kumar ....Respondent

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. R. Kartikeya, Advocate
for the petitioner.

Mr. Sunil Chadha, Sr. Advocate with
Mr. Akshay Chadha, Advocate
Mr. Tara Dutt, Advocate and
Mr. Raghav Chadha, Advocate
for the respondent.

*****

<u>SANJAY VASHISTH, J.</u>

1. Present revision petition has been filed by the petitioner/defendant challenging the order dated 30.07.2021(Annexure P-5), passed by the Court of learned Civil Judge (Jr. Division) Ludhiana, whereby the application under Order VII Rule 11 of Civil Procedure Code (C.P.C), for rejection of plaint of respondent/plaintiff-Nitesh Kumar, has been dismissed.

2. On the basis of the alleged written document dated 17.12.2018 claiming it to be an agreement to sell, plaintiff filed a suit for possession and specific performance. Petitioner-defendant filed an

application under Order VII Rule 11 C.P.C. for rejection of the plaint primarily on the following grounds:

> "(i) The suit is false, frivolous, vexatious, and a sheer abuse & misuse of the process of law
>
> *(ii) Absence of cause of action.*
>
> *(iii) The suit is barred as the alleged agreement dated 17.12.2018 set up by the Respondent/Plaintiff is inadequately stamped & unenforceable.*
>
> *(iv) The suit is barred as the alleged agreement dated 17.12.2018 set up by the Respondent/ Plaintiff is unregistered and unenforceable.*
>
> *(v) The alleged agreement dated 17.12.2018 set up by the Respondent/ Plaintiff is completely contradictory &self-destructive.*
>
> *(vi) The alleged agreement dated 17.12.2018 set up by the Respondent/ Plaintiff is void on account of vagueness and uncertainty.*
>
> *(vii) Suit being barred by limitation.*
>
> *(viii) Plaintiff being liable to pay ad-valorem court fee on the market value of the suit property."*

3. While dismissing the application, learned trial Court observed that *at this stage, prayer for rejection of the plaint is wholly immaterial, and the only requirement under the law is that if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law, the plaint can be rejected.* Further, learned trial Court observed that in all other situations, the claims will have to be adjusted in the course of the trial. It is also observed that the value of the suit property cannot be assessed at this stage and the issue of limitation and genuineness of agreement would depend on the evidence to be adduced by the parties. Thus, observed that the question of limitation and the question of genuineness of agreement are the subject matter for evidence.

4. Observations made by the learned trial Court are assailed by the petitioner-defendant primarily on the ground that looking at the nature of the document, it requires its registration under Indian Registration Act, 1908 (for short ' the Act 1908'). Due to the clever drafting, document has been made to be construed as an agreement to sell, whereas in fact, the suit is only for a symbolic possession and injunction in pursuance to the execution of the mortgage deed alongwith possession for an amount of Rs.20 lacs. Thus, without the document being duly stamped and registered, same is not admissible in evidence, therefore, same is without the statutory compliance which is inherent in it.

5. However, petitioner accepts that the question of limitation is mixed question of law and facts and the same is not addressed by him at this stage. Regarding non-registration of the documents, Mr. R. Kartikya, learned counsel for the petitioner relies upon the decision of Hon'ble Apex Court titled as, "***K.B. Saha and sons Private Limited Vs. Development Consultant Limited, (2008)8 Supreme Court Cases 564 : Law Finder Doc Id #144176",*** and refers to Section 49 of the Act, 1908, which is reproduced hereinbelow:

> ***"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,] 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, 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, 18774, or as evidence of any collateral transaction not required to be effected by registered instrument."*

Thus, Learned counsel for the petitioner contends that such an unregistered document cannot be produced as evidence of any transaction regarding the immovable property, rather, on the strength of such document, no suit can be presented before the Court. Also referred to paragraph No.34 of ***K.B. Saha's case (supra)***, which says as hereunder:

> ***"34.*** *From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:*
>
> ***1****. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.*
>
> ***2.*** *Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.*
>
> ***3.*** *A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.*
>
> ***4.*** *A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc any right, title or interest in immovable property of the value of one hundred rupees and upwards.*
>
> ***5.*** *If a document is inadmissible in evidence for want of registration none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."*

6. He further submits that the document upon which the suit is based is originally a document of mortgage deed transferring the possession on borrowing an amount of Rs.20 lacs by the defendant from the plaintiff. While relying upon the said document, plaintiff has pleaded that at the time of the execution of document dated 17.12.2018, possession had been given to the plaintiff, therefore, the prayer is for granting of a decree of a symbolic possession with permanent injunction. Since originally, mortgage deed was executed by transferring an amount of Rs.20 lacs, same requires registration as well as stamp duty over it. In the absence of both the legal requirements, document is not presentable alongwith its plaint, thus, the suit is liable to be rejected being not maintainable in law.

7. In response to the contention addressed by counsel for the petitioner, Mr. Sunil Chadha, Learned senior Advocate, representing the respondent, submits that document is neither required to be registered at this stage; nor same is required to bear the stamp over it. While referring to the agreement to sell appended with the petition itself, he submits that the mortgage of the property was only up till 30.03.2019, i.e. when the borrowed amount of Rs.20 lacs was required to be returned to the plaintiff. It is clearly elaborated in the document dated 17.12.2018 that "*If I do not return this amount of Rs.20 lacs upto the agreed date 30.03.2019, then in that eventuality, it shall be considered as an agreement to sell qua my aforestated property- Shop No.3, area about 27 square yards with Sh. Nitesh*

Kumar for the aforestated amount received from him total Rs.20 lacs (Rupees Twenty Lacs only) and Sh. Nitesh Kumar can get the Registry/Registries executed qua the aforestated property either in his name or in any one else's name he wants and I shall have no objection in that. I shall be bound to get the Registry/Registries executed in favour of Sh. Nitesh Kumar or in any one else's name he wants. In case I refuse then Sh. Nitesh Kumar can get the Registry/Registries executed through Court and I shall be liable for all Court and other expenses and in that regard, my other land/property shall be liable. In respect of this property, I have not entered into any deal with anyone for sale, mortgage etc, nor I shall do in future.'

8. Mr. Chadha, learned Senior counsel relies upon the Single Bench judgment of this Court (Punjab and Haryana High Court) titled as "***Gurbachan Singh Vs. Raghubir Singh, 2010 (5) R.C. R (Civil) 737 : Law Finder Doc Id #207734***", and submits that as per said judgment, an unregistered document does not give the right to seek a decree for specific performance and as a necessary corollary, plaintiff is not entitled to retain possession compulsorily under the garb of such an agreement. The said judgment was re-examined by the Division Bench of this Court (Punjab and Haryana High Court) in case titled as "***Ram Kishan Vs. Bijender Mann @ Vijender Mann, 2013 (2) R.C.R. (Civil) 419 : Law Finder Doc Id #403538***", wherein on a conjoint reading of Section 53A of the Transfer of Property Act,

1882 (for short 'the Act of 1882'), Section 17 (1A) and 49 of the Act, 1908, it was concluded that the non-registration of such document which is compulsorily registrable under Section 17 (1A) of the Act, 1908 would only deprive the person in possession of any benefit conferred by Section 53 A of Act, 1882. The Division Bench of this Court also held that proviso to Section 49 of the Act, 1908 clearly postulates that non-registration of such a contract would not prohibit the filing of a suit for specific performance based upon such an agreement or the leading of such an unregistered agreement into evidence.

For the sake of convenience, relevant findings recorded by the Division Bench of this Court in ***Ram Kishan's case (Supra)*** are reproduced hereunder:

> *"**11**. A conjoint appraisal of Sections 53A of the Transfer of Property Act, 1882 Sections 17(1A) and 49 of the Indian Registration Act, 1908, particularly the proviso to section 49 of the Indian Registration Act, in our considered opinion, leaves no ambiguity that, though, a contract accompanied by delivery of possession or executed in favour of a person in possession, is compulsorily registrable under Section 17(1A) of the Registration Act, 1908, but the failure to register such a contract would only deprive the person in possession of any benefit conferred by Section 53A of the 1882 Act. The proviso to section 49 of the Indian Registration Act clearly postulates that non-registration of such a contract would not prohibit the filing of a suit for specific performance based upon such an agreement or the leading of such an unregistered agreement into evidence.*
>
> ***12**. A suit for specific performance based upon an unregistered agreement to sell accompanied by delivery of possession or executed in favour of a person who is already in possession, cannot, therefore, be said to be*

> *barred by Section 17 (1A) of the Registration Act, 1908.*
>
> ***13.*** *Section 17(1A) merely declares that such an unregistered contract shall not be pressed into service for the purpose of Section 53A of the Transfer of Property Act, 1882. Section 17(1A) of the Registration Act, 1908, does not, whether in specific terms or by necessary intent, prohibit the filing of a suit for specific performance based upon an unregistered agreement to sell, that records delivery of possession or is executed in favour of a person to whom possession is delivered and the proviso to section 49 of the Indian Registration Act, 1908 put paid to any argument to the contrary.*
>
> ***14****.* *We, therefore, hold that:*
>
> ***(a)*** *a suit for specific performance, based upon an unregistered contract/agreement to sell that contains a clause recording part performance of the contract by delivery of possession or has been executed with a person, who is already in possession shall not be dismissed for want of registration of the contract/agreement;*
>
> ***(b)*** *the proviso to Section 49 of the Registration Act, legitimises such a contract to the extent that, even though unregistered, it can form the basis of a suit for specific performance and be led into evidence as proof of the agreement or part Performance of a contract."*

9. Mr. Sunil Chadha, learned senior counsel for the respondent also relies upon the latest judgment passed by the Hon'ble Apex Court titled as "***R. Hemalatha Vs. Kashthuri, 2023 AIR (Supreme Court) 1895 : Law Finder Doc Id #2187918***", and submits that as per Section 49 of the Act-1908, an unregistered document affecting the immovable property may also be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, or as evidence of any collateral transaction not required to be affected by the registered document. Hon'ble Apex Court has also drawn the difference in situations where the reliance

upon such a document is placed before or after the coming into force of the amendment of the provision of the Act-1908, that made registration of documents containing contracts to transfer any immovable property mandatory.

Findings recorded by Hon'ble Apex Court in paragraph No.5, 10 to 14 are as under:

> *"**5**. We have heard the learned counsel appearing on behalf of the respective parties at length. The short question posed for the consideration of this Court is effect of section 17(1)(g) of the Registration Act applicable to the State of Tamil Nadu by which section 17(1)(g) of the Registration Act has been inserted and instruments of agreement relating to sale of immovable property of the value of Rs.100/-and upwards is made compulsorily registrable and whether such unregistered agreement relating to sale of immovable property can be received in evidence in a suit for specific performance?*
>
> ***6**. xxxx*
>
> ***7**. xxxx*
>
> ***8** .xxxx*
>
> ***9**. xxxx*
>
> ***10.** Thus, as per proviso to Section 49, an unregistered document affecting the immovable property and required by Registration Act 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, or as evidence of any collateral transaction not required to be effected by registered document. **11**. At this stage, the primary statement of objects and reasons to the Tamil Nadu Amendment Act, 2012, is also required to be referred to and considered. The primary statement of objects and reasons seem to suggest that amendment has been introduced by the State of Tamil Nadu bearing in mind the loss to the exchequer as public were executing the documents relating to sale of immovable property etc. on white paper or on stamp paper of nominal value.*
>
> ***12.** At this stage, it is required to be noted that the proviso to Section 49 came to be inserted vide Act No.21 of 1929 and thereafter, Section*

> *17(1A) came to be inserted by Act No. 48 of 2001 with effect from 24.09.2001 by which the documents containing contracts to transfer or consideration any immovable property for the purpose of Section 53 of the Transfer of Properties Act is made compulsorily to be registered if they have been executed on or after 2001 and if such documents are not registered on or after such commencement, then there shall have no effect for the purposes of said Section 53A. So, the exception to the proviso to Section 49 is provided under Section 17(1A) of the Registration Act. Otherwise, the proviso to Section 49 with respect to the documents other than referred to in Section 17(1A) shall be applicable.*
>
> ***13**. Under the circumstances, as per proviso to section 49 of the Registration Act, an unregistered document affecting immovable property and required by Registration Act or the Transfer of Property Act 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, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17(1A) of the Registration Act. It is not the case on behalf of either of the parties that the document/ Agreement to Sell in question would fall under the category of document as per Section 17(1A) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon proviso to section 49 of the Registration Act that the unregistered document in question namely unregistered Agreement to Sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49.*
>
> ***14**. In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed. It is accordingly dismissed. There shall be no orders as to costs."*

10 On the question of considering/accepting the document for its evidentiary purpose, Hon'ble Apex Court has expressed its view in another judgment titled as ***"Ameer Minhaj Vs. Dierdre Elizabeth (Wright) Issar and Others, 2018 (3) R.C.R (Civil) 468 :***

Law Finder Doc Id #1087409", in paragraph No.10 and 11 and same are reproduced hereinbelow:

> *"**10**. On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section 53A of the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53A of the 1882 Act. The issue, in our opinion, is no more res integra. In S. Kaladevi v. V.R. Somasundaram and Ors., 2010(2) RCR (Civil) 824: (2010) 5 SCC 401 this Court has restated the legal position that when an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act. Section 49 of the 1908 Act 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 (3 of 1877), or as evidence of any collateral*

> *transaction not required to be effected by registered instrument."*
>
> ***11**. In the reported decision, this Court has adverted to the principles delineated in K.B. Saha and Sons Private Limited v. Development Consultant Limited, 2008(3) RCR (Civil) 327: (2008) 8 SCC 564 and has added one more principle thereto that a document is required to be registered, but if unregistered, can still be admitted as evidence of a contract in a suit for specific performance. In view of this exposition, the conclusion recorded by the High Court in the impugned judgment that the sale agreement dated 9th July, 2003 is inadmissible in evidence, will have to be understood to mean that the document though exhibited, will bear an endorsement that it is admissible only as evidence of the agreement to sell under the proviso to Section 49 of the 1908 Act and shall not have any effect for the purposes of Section 53A of the 1882 Act. In that, it is received as evidence of a contract in a suit for specific performance and nothing more. The genuineness, validity and binding nature of the document or the fact that it is hit by the provisions of the 1882 Act or the 1899 Act, as the case may be, will have to be adjudicated at the appropriate stage as noted by the Trial Court after the parties adduce oral and documentary evidence."*

11. Learned Senior counsel further submitted that after taking note of the several judgments, passed by Hon'ble Apex Court, the Hon'ble Patna High Court in a case titled as *"**Musmat Shanti Devi and others Vs. Lallu Ram and others, Law Finder Doc Id #2400941**"*, in paragraph No.15 held that

"***15. It is clear from the above that even where the sale agreement is not registered, the document can be received as evidence for considering the relief of specific performance and the inadmissibility will confine itself only to the protection sought for under Section 53-A of the Transfer of Property Act**."*

12. Regarding the enactment of Indian Stamp Act, 1899, learned Senior counsel cites the judgment of Hon'ble Supreme Court, titled as ***"Hindustan Steel Ltd. Vs. M/s Dilip Construction Co., 1969 AIR (Supreme Court) 1238 : Law Finder Doc Id #109308"***, and refers paragraph No.5 of the same, which reads as under:

> *"**5**. The Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments: it is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent the stringent provisions of the Act are conceived in the interest of the revenue. Once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of the initial defect in the instrument. Viewed in that light the scheme is clearSection 35 of the Stamp Act operates as a bar to an unstamped instrument being admitted in evidence or being acted upon; Section 40 provides the procedure for instruments being impounded, sub-section (1) of Section 42 provides for certifying that an instrument is duly stamped, and sub-section (2) of Section 42 enacts the consequences resulting from such certification."*

13. By referring to the said Judgment, he submits that the defect, if any, of not bearing the stamp duty with the document sought to be adduced in evidence, is a curable one. At the time of producing the same in the evidence, it will be open for the other side i.e. defendant to raise an objection concerning the required stamp and, in such eventuality,the Court would give an opportunity for making the deficiency good before allowing it to be produced as evidence before the Court. Thus, merely on the said ground, the plaint cannot be rejected on an application of the defendant.

14. I have taken note of the submissions addressed by both the sides and deeply examined the provisions of law and the judgments cited.

15. Undisputedly, the alleged document in question was executed on 17.12.2018. Taking note of the fact that Section 49 was inserted vide Act No.21 of 1929 and Section 17 (1A) of the Indian Registration Act, 1908 was inserted by Act, 48 of 2001, Hon'ble Apex Court has already made a conjoint reading and gave its interpretation alongwith the Section 53 of the Transfer of Property Act, 1882. It has been held that in a suit for specific performance under the Specific Relief Act, Section 49 of the Registration Act allows even an unregistered document affecting immovable property though, required by the Registration Act to be registered to be adduced as an evidence of any collateral transaction not required to be effected by a registered instrument.

16. All the judgments cited by learned senior counsel for the respondent make it amply clear that on the ground of non-registration of a document like in the present case, outrightly, plaintiff cannot be non-suited. Thus, where rejection of plaint is sought by the defendant, this Court is of the view that the suit cannot be rejected outrightly on the ground of non-registration of the document in question dated 7.12.2018, which is fortified, with the detailed discussion and observation made by the Hon'ble Apex Court in ***R. Hemalatha's case (supra)***.

17. Otherwise also, a *prima facie* view can be taken at this stage that the document has been now converted and construed by the plaintiff as an agreement to sell, which is not required to be registered until a sale deed is executed, based upon said/such agreement. The detailed reading of the document also makes clear that it would be a question before the Court at appropriate stage that whether after a particular date, said document has attained the shape or nature of agreement to sell, in case, nothing is paid after 30.03.2019, which was the last date for paying back the loan amount to the plaintiff. Thus, the question is still open for the trial Court to decide after leading of evidence by the respective parties.

18. Question in regard to the non-affixation of the stamp duty on the document of alleged mortgage deed/sale agreement has also been answered by the Hon'ble Apex Court, by saying that same is a curable defect. In view of the judgment in ***Hindustan Steel Ltd's case (supra)***, it has been made clear that the purpose of the Indian Stamp Act is not to punish the litigant and on the basis of the technical defect, one cannot be denied to avail his remedy without even affording an opportunity. The object of the Indian Stamp Act is to collect revenue for the State and its provisions are not to be used as an arm to curtail the rights of the litigant. Therefore, it would also be open for the trial Court to consider whether the document is deficient with the amount of stamp, and in case, the Court reaches to the said conclusion that there is no stamp or it is with deficient stamp, an

opportunity would be afforded before permitting the document to be adduced in evidence by the party relying upon it.

Thus, by recording the aforementioned reasons and relying upon the judgments cited by both the sides, present revision petition filed by the defendant is **dismissed** by upholding the impugned order dated 30.07.2021 (Annexure P-5).

Any observation made here-in-above is not to be construed as an impression on merits. It's only a *prima facie* view, and learned trial Court would decide all the issues which are expected to be framed after filing of the written statement on the basis of the evidence/material adduced before it by the parties to the suit.

19. However, it is made clear that if it is chosen by the concerned party to get the issue raised herein to be treated as preliminary, same can be claimed by moving an application and it will be total discretion of the learned trial Court to treat the issue as preliminary or not for its decision.

Disposed of.

[SANJAY VASHISTH]
19.12.2023 **JUDGE**
rashmi

Whether speaking/reasoned Yes/No
Whether reportable? Yes/No