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

RSA NO. 2032 of 2012 (O&M)

DATE OF DECISION : 11.05.2023

Mohinder Singh**...Appellant**

Versus

Dharam Singh**...Respondent****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Hitesh Kumar Sammi, Advocate,
For the appellant.

None for the respondent.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals before learned trial Court.

2. This is defendant/appellant's second appeal against the judgment of reversal. The learned trial Court vide judgment and decree dated 29.04.2011 dismissed the suit for permanent injunction filed by plaintiff/respondent with costs, but learned First Appellate Court reversed the same by passing judgment and decree dated 27.02.2012 and decreed the suit of plaintiff.

2.1 Plaintiff/respondent herein filed a suit for permanent injunction qua suit land. It was claimed that he purchased the land in dispute from defendant for a sum of Rs.20,000/- and agreement was executed between them on 05.05.1997. Full and final payment was made and possession of the property in question was also delivered to the plaintiff by the defendant and since then, he is its owner in possession.

Due to rise in price of property, defendant threatened the plaintiff with dispossession from the property. Hence, suit was filed.

2.3 Upon notice, defendant appeared and filed written statement taking preliminary objections that suit is not maintainable as plaintiff is neither owner nor in possession of suit property. Plaintiff has not filed scaled site plan with mala fide intention. Plaintiff has no locus standi to file the suit; that suit is false, frivolous and vexatious.

2.4 On merits, it was admitted that plaintiff purchased suit property from defendant for a sum of Rs.20,000/-. However, later on the plaintiff entered into another agreement dated 26.02.2003 with defendant and handed over vacant possession of the property to the defendant after receiving Rs.1,35,000/-. Plaintiff has no concern with suit land.

3. Replication was filed wherein it was stated that plaintiffs filed a suit earlier also against Municipality wherein they were held owner in possession of the site in dispute.

4. Based on the rival pleadings, following issues were framed:

- “(1) Whether the plaintiffs is in possession of the suit property ? OPP*
- (2) Whether the plaintiff is entitled to injunction prayed for? OPP*
- (3) Whether the suit is not maintainable ? OPD*
- (4) Whether the plaintiff has no locus standi to file the suit? OPD*
- (5) Whether the plaintiff has no cause of action to file the suit ? OPD*
- (6) Relief.*

5. During the pendency of proceedings, defendant Jagir Kaur expired and Mohinder Singh was impleaded as her legal representative vide order dated 18.01.2011.

5.1 The parties to suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

6. On appraisal of evidence vis-à-vis pleadings, issue No.1 was decided against the plaintiff. Consequently, suit of plaintiff was dismissed with costs by the learned trial Court.

7. Feeling aggrieved, plaintiff/respondent herein went in appeal and learned First Appellate Court vide judgment and decree dated 27.02.2012 reversed the findings of learned trial Court and decreed the suit of plaintiff. However, parties were left to bear their own costs. Hence, instant regular second appeal.

8. I have heard learned counsel for appellant and perused the judgments of both the Courts below.

9. It is common case of the parties that pursuant to agreement dated 05.05.1997, against receipt of Rs. 20,000/- from the plaintiff, the defendant had handed over possession of suit property to the plaintiff.

10. The case set up by the defendant is that later on, another agreement dated 26.02.2003 Ex.D-1 was executed between the parties and pursuant to it, against receipt of Rs.1,35,000/- the plaintiff had delivered back possession of suit property to him. Learned counsel for the defendant/appellant has argued that when the said agreement stood proved on record, the learned First Appellate Court erred in discarding the same and decreeing the plaintiff's suit by reversing the learned trial Court's

judgment for dismissal of the suit. I regret my inability to agree with him.

10.1 Section 17 (1A) of the Registration Act inserted vide the Act No. 48 of 2001 is as under:-

“17 (1A) - The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001”

10.2 In my opinion, agreement dated 26.02.2003 Ex D-1 set up by the defendant is hit by Section 17(1A) *ibid* and cannot be pressed into service to prove his possession over suit property. While considering its applicability to the said agreement, the learned Appellate Court observed/ held as under:

“xxx

15. The defendant has put forth a case to the effect that he entered into possession of the suit property in part performance of the agreement Ex.D1. Admittedly, the agreement Ex.D1 has not been registered and consequently the said agreement shall have no effect for the purpose of Section 53A of Transfer of Property Act. The agreement has been executed after the commencement of Registration and Other related Laws (Amendment) Act, 2001 and the same was compulsorily registerable. An unregistered agreement will no confer any right or title upon the defendant and the same cannot be received in evidence and it cannot be construed on the basis of the said agreement that the defendant is in possession of the suit property. As a natural corollary it has to be construed that the plaintiff continued to be in possession of the suit property and as such, the findings of the learned lower court on issues No. 1 reversed and 2 are liable to be reserved. Accordingly the findings of the learned trial court on issues No. 1 and 2 are reserved and are recorded in favour of the plaintiff and against the defendant.

16. For the aforesaid reason, finding sufficient merit in the appeal filed by the appellant/plaintiff, the same is accepted and suit for permanent injunction restraining the defendant from forcibly or illegally dispossessing the plaintiff from the

suit property is decreed. The parties are left to bear their own costs. Decree-Sheet be prepared. Record of the learned lower court be sent back. Appeal file be consigned to the record room.

Xxx”

10.3 I am inclined to agree with the observations made and the view taken by learned First Appellate Court, which seems consistent with the record and the applicable law. As such, the impugned judgment merits being affirmed with liberty to the defendant to seek/recover possession of suit property in accordance with law.

11. In the premise, impugned judgment and decree dated 27.02.2012 passed by learned First Appellate Court is affirmed, subject to modification that permanent injunction restraining the defendant to forcibly or illegally dispossess the plaintiff from suit property would operate with the exception that the latter shall be at liberty to do so in accordance with law. Decree sheet be prepared accordingly.

12. Pending applications, if any, shall stand disposed of.

13. No order as to costs.

MAY 11, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No