

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

134

2024:PHHC:041792
RSA-1651 of 1993 (O&M)
Date of decision: 20.03.2024

PUSHPA DEVI AND OTHERS ..Appellants

Vs.

KARTAR SINGH AND OTHERS ..Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rajiv Kataria, Advocate
for the appellants.

Mr. P.S. Jammu, Advocate with
Mr. Naveen Sihag, Advocate and
Mr. Santosh Kumar, Advocate and
Mr. Karan Bansal, Advocate for the respondents.

PANKAJ JAIN, J.(ORAL)

1. Plaintiffs are in second appeal. The parties are referred herein as per their original position in the suit. Appellants as plaintiffs and respondents as defendants.
2. Suit was filed for possession claiming that the plaintiffs are owners of suit land and defendants are in possession thereof without having any right to continue. Claim of plaintiffs was resisted by the defendants relying upon agreement to sell dated 09.01.1975 as well as agreement to sale deed (unregistered sale deed) dated 26.06.1975 executed through Dhannu Ram Special Power of Attorney of the plaintiffs.
3. Both the Courts below found that the defendants were rightfully continuing in possession of suit property. Courts found that admittedly there was agreement to sell with respect to the suit property dated 09.01.1975 whereby the plaintiffs agreed to sell suit land for consideration of Rs.27,134/-and prior to agreement to sell defendants were in possession as

tenants over the suit property. As per the terms of agreement to sell, the sale deed was to be executed on or before 27.06.1975. On 26.06.1975 document Exhibit D-1 was scribed. However, during the lunch time Dhannu Ram the attorney slipped away due to which the sale deed could not be registered. The Courts found that there being clear recital in the unregistered sale deed Exhibit D-1 to the effect the possession having been handed over to the vendees i.e. the defendants, their possession was protected under Section 53A of the Transfer of Property Act, 1882 (hereinafter referred to as 'Act of 1882'). Thus plaintiffs had no right to claim possession by way of the present suit.

4. Mr. Kataria while assailing the findings of the Courts below has asserted that the *sine qua non* of Section 53A of the Act of 1882, is that vendees should always be ready and willing to perform their part which is missing in the present case. The present suit was filed in 1985 and for 10 years, no effort was made by the defendants to get the sale deed registered. He further submits that the recital in the sale deed to the effect that the possession of the land has been delivered is inconsequential. Reliance is being placed upon judgment rendered by this Court in case of '**Singh Rai and Others Vs. Smt. Gargi Devi and Others 1982 PLR 782**'.

5. Per contra, Mr. Jammu submits that so far as readiness and willingness on the part of the respondents is concerned, the same has been proved on record by way of Exhibit D-4/1 as well as D-1, which go on to prove that vendees/defendants were present before the Sub Registrar on 26.06.1975. Document Ex.D-1 was scribed and both the parties signed thereon. However, before the registration could be effectuated, attorney of the plaintiffs Dhannu Ram deliberately slipped away. Thus, it does not lie in the

mouth of the plaintiffs to assert that defendants were not ready and willing to perform their part. He further submits that vendees were present in the Tehsil when the documents were executed. The inference can be drawn that they were having payment on appointed day. As per settled proposition of law, vendees were not required to wave wards of notes to show their readiness. The reliance is being placed upon judgment of this Court in **Manga Singh Vs. Guman Singh and Others 2006(47)R.C.R. (Civil) 881.**

6. I have heard learned counsel for the parties and perused the record of the case.

7. Facts are not much in dispute. The question that falls for consideration before this Court is:-‘Whether in given facts and circumstances, fault can be found with the courts below in returning the finding that defendants are entitled to protect their possession under Section 53-A of the Act of 1882?’

8. Here, it will be apt to peruse the provision:

“53-A. **Part performance**- where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty.

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of

the contract, the notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this Section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

9. As per settled proposition of law, the requisites to attract umbrella of Section 53A are:

- (1) There should be a contract for the transfer of immovable property in writing.
- (2) The terms of the same should be ascertainable with reasonable certainty.
- (3) The transferee should, in part performance of the contract,
 - (a) take possession, or
 - (b) continue in possession and do some act in furtherance of the contract.
- (4) The transferee should perform, or be willing to perform, his part of the contract.
- (5) The application of the doctrine should not affect the right of a transferee for consideration without notice of the contract or of the part performance there.

10. It is not the case of the plaintiffs that on 26.06.1975 document Ex D-1 was not executed. Ex. D1 is in writing signed by both the parties. Apart from that, the defendants have successfully proved their willingness by proving the order passed by Sub Registrar i.e. Exhibit D-4/1. So far as the absence of proof regarding readiness of payment is concerned, this Court must notice that readiness is not one of the ingredient of Section 53-A. It is only the willingness that constitutes as a necessary requisites to attract the provision. Apart from that, what happened on 26.06.1975 could have been controverted by the attorney of the plaintiffs i.e. Dhannu Ram. He opted not to step into witness box. Thus plaintiffs withheld best piece of evidence to rebut the case of the defendants. The defendants who are transferee in the contract, were continuing in possession thus courts rightly dismissed the suit filed by the plaintiffs.

11. Thus, in view of the above, this Court does not find any reason to interfere in the second appeal. Resultantly, the same is dismissed.

March 20, 2024
Poonam Sharma

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable :	No