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

**RSA No.2703 of 1994
Date of Decision: 24.10.2024**

Gurdev Singh (deceased) through LR.

.....Appellant

Versus

Piara Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Angel Sharma, Advocate
for the appellants.

Mr. Rajinder Sharma, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

Plaintiff is in second appeal.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the plaintiff and the respondents as the defendants.

3. Plaintiff filed suit for possession claiming that he was owner in possession of the house in dispute. He inherited the same from his brother Sebhu Singh. Defendants performed Path and Bhog in the instant house on 24.06.1986. On request of the defendants, the house was given by plaintiff for use. However, despite repeated requests of plaintiff, defendants have failed to hand-over possession of the house back to him.



4. Defendants filed written statement disputing the claim of the plaintiff. They further claimed that plaintiff himself sold the house in dispute for a consideration of Rs.32,00/- on 24.06.1986 and delivered the possession.

5. On the basis of the pleadings, Court of First Instance framed the following issues:

- “1. Whether Sebhu Singh brother of the plaintiff was owner in possession of the house in dispute? OPP.
2. If issue no.1 is proved, whether the plaintiff inherited the said house from Sebhu Singh and is owner in possession of the house in dispute? OPP.
3. Whether the plaintiff is entitled to the possession of the house in dispute? OPP.
4. Whether the suit is bad for non-joinder of necessary parties? OPD.
5. Whether the suit has been property valued for the purposes of court fee and jurisdiction? OPP.
6. Whether the defendants purchased the house in dispute from the plaintiff on 26.6.86 for a consideration of Rs.3200/-? OPD.
7. Relief.”

6. Trial Court decided issues No.1, 2, 3 and 6 together. After analysing the evidence on record, Trial Court came to the conclusion that writing Exhibit D-1 propounded by the defendants, alleged to have been executed by the plaintiff, wherein the suit property is claimed to have been purchased by the defendants though stands proved, but the same shall not vest any right, title or interest in favour of the defendants being an unregistered document. Resultantly, Trial Court decided all issues in favour



of the plaintiff and against the defendants and decreed the suit filed by the plaintiff.

7. Defendants preferred appeal.

8. In appeal, Lower Appellate Court reversed the findings recorded by the Trial Court holding that even though writing, Exhibit D-1 propounded by the defendant/Piara Singh is an unregistered document but the execution thereof stands proved. In terms of provisions as contained under Section 49 of the Indian Registration Act, 1908 (hereinafter referred to as the 'Act of 1908'), the same can be received as evidence of part performance of a contract for the purpose of Section 53-A of the Transfer of Property Act, 1882 (hereinafter referred to as 'the Act of 1882'). Lower Appellate Court further held that execution of the document, Exhibit D-1, having been proved, plaintiff having received the amount and defendant No.1 having performed his part, all requirements of Section 53-A of the Act of 1882 stand fulfilled and, thus, the defendant No.1 is well within his right to protect his possession.

9. Ld. Counsel for the appellant while assailing the impugned judgment and decree passed by the Lower Appellate Court submits that appellant in his testimony clearly stated that he never sold house to defendant No.1/Piara Singh and his thumb-marks have been received by fraudulent measure. Lower Appellate Court erred in believing the document and admitting the same in evidence.



10. I have heard counsel for the parties and have carefully gone through records of the case.

11. Once defendant No.1 himself claims title to the suit property under Exhibit D-1, which is a writing executed by plaintiff, the title of the suit property in favour of the plaintiff cannot be said to be in dispute.

12. Thus, the question is :

“Whether defendant can protect his possession on the strength of Exhibit D-1 or not?”

13. After defendant No.1 propounded writing, Exhibit D-1 and claimed that he purchased the suit property from plaintiff for a valuable consideration of Rs.3200/-, plaintiff claimed that his thumb-impressions on the document, Exhibit D-1 were obtained by fraud. However, plea of fraud could not be substantiated and remained a bald plea. Meaning thereby, the plaintiff admits his thumb-impressions on Exhibit D-1. Defendant No.1 Piara Singh further proved execution thereof by examining Mohinder Singh, the scribe as DW-2 and Sebhu Singh, the attesting witness to Exhibit D-1 who appeared as DW-3. Both the Courts below, thus rightly found that the execution of Exhibit D-1 was fully proved by the defendants.

14. The next question is regarding the effect of non-registration of writing Exhibit D-1.

15. Section 54 of the Act of 1882 defines 'sale' and reads as under :



“54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

16. The value of the property being more than Rs.99/-, Exhibit D-1 cannot be held to have an effect of sale of the house in question.

17. Section 53-A of the Act of 1882 reads as under :

"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,



then, 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.”

18. Section 49 of the Indian Registration Act, 1908 prior to Amendment Act 48 of 2001 which came into effect on 24.09.2001 reads as under :

“49. Effect of non-registration of documents required to be registered.—No document required by section 17 2[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:

3[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, 1877, or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882 or as evidence of any collateral transaction not required to be effected by registered instrument.]”



19. Thus, in terms of Section 53-A of the Act of 1882, the defendant No.1 in order to save his possession, was required to prove the following ingredients :

- (i) Existence of contract for transfer of immovable property;
- (ii) Such contract should be in writing by the other party with ascertainable terms;
- (iii) Transferee, in part performance of the contract, should have taken possession or continue in possession or should have done some other act in furtherance of the contract; and
- (iv) The transferee should perform or is willing to perform his part of the bargain set down in the writing.

20. Keeping in view the aforesaid ingredients, this Court finds that defendant No.1 validly proved all the ingredients required to attract Section 53-A of the Act of 1882. Exhibit D1 being admissible in evidence in terms of Section 49 of the Act of 1908, this Court finds that Lower Appellate Court rightly reversed the findings recorded by the Trial Court and allowed the appeal preferred by the defendants.

21. As a sequel of the discussion held herein-above, this Court does not find any reason to interfere in the findings recorded by the Lower



Appellate Court in the impugned judgment and decree. Resultantly, the instant appeal is ordered to be dismissed.

October 24, 2024

Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes