



148

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

RSA No.1699 of 2024 (O&M)

Date of decision : 20.01.2025

Raj Kumar

Versus

....Appellant

Raj Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Ashish Gupta, Advocate
for the appellant.

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 seeking decree of declaration to the effect that he is owner in possession of the suit property i.e. residential house as detailed out in the head-note of the plaint. Plaintiff claimed declaration on the strength of an agreement to sell dated 25.02.2012 executed by Manoj Kumar (now deceased). He further sought decree of permanent injunction restraining the defendants, their agents etc. from interfering into his peaceful possession over the suit property.



4. As per the case of the plaintiff, he along with his deceased brother namely Manoj Kumar acquired property from their mother Smt. Kaushlya Devi wife of Krishan Lal on the strength of registered Will dated 02.05.2011. Kaushlya Devi acquired the property, in question, by way of sale deed bearing No.2426 dated 02.05.2011. Kaushalya Devi died on 21.05.2011. Plaintiff claimed that Manoj Kumar in dire need of money for domestic needs and business, sold his 1/2 share in favour of the plaintiff. He received full and final amount *qua* his share and executed an affidavit in favour of the plaintiff in presence of witnesses namely Khushi Ram and Sudha Mouga. Manoj Kumar died on 14.10.2021.

5. Defendants No.1 to 5 opted not to appear despite service and were proceeded against *ex parte* vide order dated 05.08.2022.

6. Proforma defendant No.2 filed written statement admitting the case of the plaintiff.

7. Both the Courts below have non-suited the plaintiff holding that the agreement to sell propounded by the plaintiff claiming transfer of rights from Manoj Kumar, being an unregistered document could not be admitted in evidence in terms of Sections 17 and 49 of the Registration Act, 1908.

8. Counsel for the appellant is not in position to dispute that after Amendment of 2003, provisions as contained under Sections 17 and 49 of the Registration Act, have undergone sea-change. Document, Exhibit P-3 which was required to be compulsorily registered, cannot be admitted in



evidence. He is also not in position to dispute that in terms of Section 54 of the Transfer of Property Act, 1882, Exhibit P-3 does not amount to sale of immoveable property.

9. In view thereof, this Court does not find any reason to interfere in the concurrent finding recorded by the Courts below dismissing the suit filed by the plaintiff as Exhibit P-3 can neither be taken as a sale deed to grant decree of declaration in favour of the plaintiff, nor the document (Exhibit P-3) can be admitted in evidence as an agreement to sell to protect the possession of the plaintiff recognizing his right under Section 53-A Transfer of Property Act, 1882, holding him entitled for part performance.

10. As a sequel of the discussion held hereinabove, finding no merit in the instant regular second appeal, the same is ordered to be dismissed.

11. Pending application, if any, shall also stand disposed off.

January 20, 2025

Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No