

(2021-3)203 PLR 368

PUNJAB AND HARYANA HIGH COURT

Before: Justice Anil Kshetarpal.

SARITA DEVI – Appellant,

Versus

SULTAN SINGH (since deceased) now represented by his Legal heirs and others –
Respondents.

RSA No.288 of 2021(O&M)

(i) Transfer of Property Act, 1882 (4 of 1882) Section 53A – Registration of the agreement to sell coupled with delivery of possession has been made mandatory if the document is to be used for the purpose of Section 53A of the Transfer of Property Act, 1882 – No doubt, a mere agreement to sell does not, of itself, create any interest in or charge on the property agreed to be sold as per Section 54 of the Transfer of Property Act, 1882 – The position remains the same even if the agreement to sell is not registered – On execution of the agreement to sell with delivery of possession, the transfer of the title does not take place – By now, it is well settled that the execution of the registered agreement to sell coupled with delivery of possession does not result in transfer of the immovable property worth more than Rs.100/- – Registration Act, 1908 (16 of 1908), Section 17(1A). [Para 9, 15, 19]

(ii) Limitation Act, 1963 (36 of 1963) Article 54 – Parties while executing the agreement to sell did not stipulate the period, the time or the date for execution and registration of the sale deed – Article 54 of the Schedule attached to the Limitation Act, 1963, is in two parts – The second part provides that the limitation would begin to run only if the plaintiff has a notice of the fact that the performance has been refused. [Para 21]

Cases referred to :

1. (2012-2)166 PLR 241, *Sukhwinder Kaur v. Amarjit Singh*.
 2. 2018 SCC online, Delhi 9425, *Rishi Raj v. Rakesh Yadav*.
 3. (2013-1)169 PLR 195, *Ram Kishan v. Bijender Mann alias Vijender Mann*.
 4. (2012) 1 SCC 656, *Suraj Lamp & Industries (P) Ltd. v. State of Haryana*.
 5. (2021-3)203 PLR 030, *Lalit v. Colonel Sudhier Kumar Sardana*.
- Mr. Samarth Sagar, for the appellant.*

Anil Kshetarpal, J (Oral) – (28.06.2021) – The hearing of the case was held through video conference on account of restricted functioning of the Courts.

2. Defendant No.1 is the appellant. She assails the correctness of the judgments and decrees passed by the courts below. The plaintiff late Sh. Sultan Singh filed a suit for specific performance of the agreement to sell dated 28.03.2003 executed by late Smt. Bimla Devi (the predecessor in interest of the defendants). As per the agreement to sell, House No.129/P-8 measuring 125 sq. yards, situated in Shanti Nagar, Nilokheri, District Karnal was agreed to be sold for total sale consideration of Rs.3,51,000/-. As per the agreement, on receipt of the entire sale consideration, late Smt. Bimla Devi while executing the written agreement to sell in the presence of the marginal witnesses also delivered the

possession of the house. She also executed a registered Will in favour of the plaintiff on 28.03.2003 as also a General Power of Attorney in favour of Smt. Shugni Devi, the mother of Sultan Singh-the plaintiff which was subsequently registered on 17.04.2003.

3. After the death of late Smt. Bimla Devi on 27.08.2006, the plaintiff requested the defendants to come forward for execution and registration of the sale deed. Since there was no response, therefore, before filing the suit, a notice dated 24.10.2009 was sent to the defendants to come to the office of Sub-Registrar on 09.11.2009, for registration of the sale deed. However, the defendants did not come present whereas the plaintiff remained present in the office of Sub-Registrar on 09.11.2009. Hence, the suit was filed.

4. Defendant no.1, 2 and 3 filed their written statements contesting the suit. Apart from the objection with regard to non impleadment of Ram Pal, the husband of late Smt. Bimla Devi as a party defendant, it was pleaded that the plaintiff did not act on the basis of the agreement to sell till the death of late Smt. Bimla Devi and the suit has been filed on the basis of a forged and fabricated agreement. The execution of the agreement to sell on the receipt of total sale consideration by late Smt. Bimla Devi was also denied.

5. Both the courts, on appreciation of the evidence, have concurrently found that the plaintiff has successfully proved the execution of the agreement to sell on receipt of total sale consideration. Both the courts further held that the plaintiff continues to be in possession after having been put in possession by late Smt. Bimla Devi. The trial court decreed the suit to the extent of 4/5th share of the house in question except the share of Ram Pal.

6. Heard, learned counsel for the appellant at length. He has also forwarded written submissions in support of his oral arguments. There is no challenge to the findings of fact with reference to execution of the agreement to sell coupled with delivery of possession on receipt of entire sale consideration.

7. Learned counsel representing the appellant has raised the following contentions:-

(1) A suit for specific performance of the agreement to sell cannot be filed on the basis of an unregistered agreement to sell particularly when the delivery of possession is also agreed to. He, in support thereof relies upon the judgments passed in *Sukhwinder Kaur v. Amarjit Singh and others*,¹ (2012-2)166 PLR 241 and *Rishi Raj and others v. Rakesh Yadav and others*,² 2018 SCC online, Delhi 9425.

(2) The judgment passed by Hon'ble Division Bench in *Ram Kishan and another v. Bijender Mann alias Vijender Mann and others*,³ (2013-1)169 PLR 195 is sub silentio as the Bench has failed to notice that a mere agreement to sell does not transfer any right or interest in the immovable property.

(3) In fact, the suit for specific performance of the agreement to sell, in essence, becomes an attempt to protect physical possession and therefore, on the basis of an un-registered agreement to sell, no suit could be filed.

(4) Once along with the execution of the agreement to sell, the possession of the immovable property is delivered, the transfer is complete and therefore, it becomes de-facto conveyance deed which cannot be admitted in evidence in the absence of appropriate stamp duty.

(5) The suit filed by the plaintiff is barred by limitation.

This Bench has considered the arguments, however, find no substance.

8. It may be noted here that in the year 2001, the India Registration Act, 1908, was amended by inserting Section 17(1A) which reads as under:-

“Section 17(1A) of Indian Registration Act, 1908. 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 Law (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, then shall have no effect for the purpose of the said Section 53A.”

9. It is apparent that the registration of the agreement to sell coupled with delivery of possession has been made mandatory if the document is to be used for the purpose of Section 53A of the Transfer of Property Act, 1882, which reads as under:-

53A. *Part performance*.—Where any person contracts to transfer for consideration any immoveable 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 2[***] 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.

10. Thus, on a con-joint reading of Section 53A of the Transfer of Property Act, 1882 and Section 17(1A) of the Indian Registration Act, 1908, it is apparent that Section 17(1A) is applicable only if the document is to be used for the purpose of Section 53A of the Transfer of Property Act, 1882. In other words, if a party comes to the Court to seek protection of his possession which was delivered in part-performance of the agreement to sell then such agreement to sell shall not be admitted in evidence unless it is registered. By amending certain provisions of the Transfer of Property Act, 1882 and Indian Registration Act, 1908, a paradigm shift in the rights flowing from the agreement to sell referred to under Section 53A of the Transfer of Property Act, 1882 has been brought. However, such amendment is not applicable in case a suit is filed for specific performance of an un-registered agreement to sell containing a recital of the delivery of possession. A Division Bench in *Ram Kishan and another* (supra), while resolving conflicting opinions after discussing the relevant provisions has conclusively held that a suit for specific performance based upon an un-registered contract/agreement to sell coupled with the delivery of possession or acknowledging the possession of a person who is already in possession, shall not be dismissed for want of registration.

11. This Bench has carefully read the judgment passed in *Sukhwinder Kaur v. Amarjit Singh and others*,¹ 2012 AIR (Punjab) 97. In this case, defendant no.4 had filed a revision petition against the order passed by the trial court dismissing an application under Order 7 Rule 11 [CPC](#) for rejection of the plaint on the ground that the agreement to sell is not registered. The Bench while dismissing the revision petition held that Section 53A of the Transfer of Property Act, 1882, has no applicability to the suit for specific performance of the agreement to sell and therefore, a suit for specific performance of the agreement to sell can be filed on the basis of an un-registered agreement to sell. Thus, the aforesaid judgment does not help the appellant and rather decides contrary to the arguments of

learned counsel.

12. Next judgment relied upon by learned counsel representing the appellant is in *Rishi Raj and others* (supra). On careful reading of the aforesaid judgment, it is apparent that ultimately the Bench granted the decree for specific performance of the agreement to sell while reversing the judgment passed by the trial court in which only alternative relief of recovery of the amount was granted. Still further, in this case the Bench in paragraph 5 noted the question involved, which reads as under:-

“The question before this Court is whether the said set of documents required registration and if so, as to whether Mr. Rakesh Yadav is entitled to specific performance.”

13. While discussing the aforesaid question, the Court held that since in fact there was no delivery of possession, therefore, the suit is maintainable. Hence, the question which was involved in that case was different. Still further, it is well settled that only the ratio decidendi of a judgment is binding.

14. In view of the aforesaid Division Bench judgment in *Ram Kishan and another* (supra), this Bench does not find any substance in the argument of the learned counsel with regard to lack of registration.

15. The contention no.2 as noticed above, also does not have substance. The judgment passed by a Larger Bench is after discussing the law on the subject is binding. No doubt, a mere agreement to sell does not, of itself, create any interest in or charge on the property agreed to be sold as per Section 54 of the Transfer of Property Act, 1882. The position remains the same even if the agreement to sell is not registered. Section 54 of the Transfer of Property Act, 1882, is extracted as under:-

“54. “Sale”.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Sale how made.—3Such transfer, in the case of tangible immoveable 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. 1In the case of tangible immoveable 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 immoveable 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 immoveable 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. Thus, the argument of the learned counsel that in the case of *Ram Kishan and another* (supra), the Bench failed to notice that a mere agreement to sell does not transfer any right or interest in the property, does not advance the case of the appellant.

17. With regard to contention No.3, it may be noted that the Parliament in its wisdom has laid down that the agreement to sell coupled with the delivery of possession shall be required to be registered only if it is to be used for the purpose of Section 53-A of the Transfer of Property Act, 1882. The aforesaid provision has already been reproduced above. However, since, there is no corresponding amendment in Section 54 of the Transfer of Property Act, 1882, therefore, even if in the suit for specific performance of the agreement to sell the plaintiff prays for protection of his physical possession, the same would not amount to a suit for protecting the physical possession only. If ultimately such suit is dismissed by the Court while refusing to grant the relief of specific performance of the agreement to sell then, of course, the plaintiff may not be entitled to an injunction on the

basis of possessory right only. However, till such time, when the suit for specific performance of the agreement to sell is pending, the plaintiff is entitled to protect his physical possession on the basis of an un-registered agreement to sell.

18. Hence, there is no substance in the argument.

19. With regard to contention No.4, it may be noted that on execution of the agreement to sell with delivery of possession, the transfer of the title does not take place. By now, it is well settled that the execution of the registered agreement to sell coupled with delivery of possession does not result in transfer of the immovable property worth more than Rs.100/- as held in *Suraj Lamp & Industries (P) Ltd. v. State of Haryana and another*⁴ (2012) 1 SCC 656. The Hon'ble Supreme Court while discussing the effect of such agreements along with Will, General Power of Attorney and Special Power of Attorney has conclusively laid down that such a document does not result in transfer of title of immovable property worth more than Rs.100/-.

20. The last argument of the learned counsel is with respect to limitation.

21. In this case, the parties while executing the agreement to sell did not stipulate the period, the time or the date for execution and registration of the sale deed. Article 54 of the Schedule attached to the Limitation Act, 1963, is in two parts. First part is not applicable in the facts of this case. The second part provides that the limitation would begin to run only if the plaintiff has a notice of the fact that the performance has been refused. This Bench while deciding *Lalit and others v. Colonel Sudhier Kumar Sardana and another*⁵ (2021-3)203 PLR 030, has held as under:-

“On careful reading of the provision, it is apparent that the time from which the period begins to run has been divided in two parts. First part provides that in case the date is fixed for performance, then the period for filing a suit for specific performance would begin to run from the date or the period prescribed for its performance. The limitation for filing the suit is 3 years from the date fixed for the performance of the contract. The second part provides that if no such date is fixed, the time from which the period begins to run would start when the plaintiff has the notice of the fact that performance has been refused. Thus, in a contract where no date/period is prescribed, then the period will begin to run from the date the plaintiff has the notice of the fact that the opposite party has refused to perform the contract. In the present case, it is not the case of the defendants that they gave notice to the plaintiff or the plaintiff previously knew that the defendants have refused to honour the agreement to sell. Thus, the limitation would not begin to run from the date when the agreement to sell was entered into. Both the courts have correctly held that the suit to be within limitation.”

22. In view of the position, there is no occasion for the Court to accept the submissions of the learned counsel representing the appellant.

13. In view of the aforesaid discussion, this court comes to a conclusion that there is no merit in the appeal and hence, the same is dismissed in limine.

RMS - Petition Dismissed