

Bhagwan Singh And Anr vs Dalel Singh on 23 January, 2024

Author: Alka Sarin

Bench: Alka Sarin

RSA-5904-2019 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-5904-2019 (O
Reserved on : 18
Date of decision

BHAGWAN SINGH & ANOTHER

Versus

DALEL SINGH

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Satbir Singh Gill, Advocate for the appellan

ALKA SARIN, J.

CM-16872-2019 & CM-16870-2019

1. For the reasons stated therein, the application for condonation of delay in refiling and filing the appeal is allowed. Delay of 61 days in refiling and 15 days in filing the appeal are condoned.
CM-16871-2019

2. The Court fee has already been made good. The present application is disposed off as infructuous.

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3. The present regular second appeal has been preferred by the plaintiff-appellants against concurrent findings of both the Courts below whereby their suit for specific performance has been dismissed.

4. Brief facts relevant to the present lis are that the plaintiff- appellants filed a suit for specific performance of agreement to sell dated 14.06.2004 regarding a house built on land bearing Khata No.303/479, Khasra No.1466/1-0, 1641/0-2, measuring 1 Bigha 2 Biswas to the extent of 1/20 share situated at village Batriana for a total sum of 60,000/- and in the integrity of this judgment/order.

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alternative suit for recovery of Rs.60,000/- being the total amount of sale consideration paid by them to the defendant-respondent, alongwith costs and interest, as also a suit for permanent injunction for restraining the defendant- respondent from dispossessing or interfering in the possession of the plaintiff-appellants over the suit property or selling, mortgaging or transferring it to any other person except the plaintiff-appellants. It was averred that the defendant-respondent had entered into an agreement to sell the suit house along with all rights of share of 'rasta' etc. with the plaintiff- appellants vide agreement to sell dated 14.06.2004 for a total sale consideration of Rs.60,000/- and that the defendant-respondent had received the total sale consideration amount from the plaintiff-appellants in the presence of witnesses. It was further averred that the defendant-respondent had delivered the physical possession of the suit house to the plaintiff-appellants and as such they were in possession of the same since the date of execution of agreement to sell. As per the plaintiff-appellants the defendant- respondent had agreed to execute the sale deed of the suit house and that the plaintiff-appellants were still ready and willing to perform their part of the agreement but the defendant-respondent had flatly refused to admit their claim. Hence, the present suit. The defendant-respondent in his written statement took the pleas that the alleged agreement to sell dated 14.06.2004 is not admissible in evidence being an unregistered document, the suit of the plaintiff-appellants is not maintainable and they have no locus standi or cause of action to file the suit. It was the stand taken that the defendant- respondent neither entered into any agreement to sell nor any alleged agreement was executed and that the defendant-respondent had not handed integrity of this judgment/order.

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over any possession of the suit house to the plaintiff-appellants. It has been replied that the defendant-respondent is the owner and in possession of the suit house and that no alleged amount of Rs.60,000/- was ever received by the defendant-respondent and that the alleged agreement does not bear the thumb impression of the defendant-respondent. Replication to the written statement of was filed and on the basis of the pleadings the following issues were framed :

1. Whether the agreement to sell dated 14.06.2004 has been executed between the parties ? OPP
2. Whether the plaintiffs are ready and willing to perform their part of the contract ? OPP
3. Whether the plaintiffs are entitled to the relief of specific performance of the agreement to sell dated 14.06.2004 as detailed in the plaint ? OPP
4. Whether the plaintiffs are entitled to recovery of Rs.60,000/- along with cost of the suit and future interest @ 12% per annum in the alternative ? OPP

5. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for ? OPP

6. Whether the suit of the plaintiffs is not maintainable ? OPD Section 41 of Transfer of Property Act ? OPD

7. Relief.

5. The parties led their evidence and on the basis of the pleadings and evidence, the Trial Court dismissed the suit of the plaintiff-appellants integrity of this judgment/order.

2024:PHHC:008314 RSA-5904-2019 (O&M) -4- holding that the agreement to sell was not proved by any attesting witness, the plaintiff-appellants did not take any steps for execution of the sale deed for ten years, the agreement to sell being unregistered it was inadmissible in evidence since it purported to transfer possession, and that the agreement to sell was a suspicious document. Aggrieved by the judgment and decree dated 17.09.2016, an appeal was preferred by the plaintiff-appellants which also met with the same fate vide judgement and decree dated 15.03.2019. Hence, the present regular second appeal.

6. The learned counsel for the plaintiff-appellants has contended that the impugned judgements and decrees are illegal and against the evidence available on the record. It is argued that the execution of the agreement to sell stands proved and possession of the plaintiff-appellants over the suit house stands established and thus the suit ought to have been decreed.

7. Heard learned counsel for the plaintiff-appellants and perused the paperbook.

8. In the present case the plaintiff-appellants have failed to establish the due execution of the agreement to sell. No attesting witness was examined. The depositions of the Notary Public and the Handwriting and Fingerprint Expert do not prove the proper and due execution of the agreement to sell. The counsel for the plaintiff-appellants has been unable to satisfy this Court as to why for ten years the plaintiff-appellants just kept sitting on the fence - the agreement to sell allegedly having been executed on 14.06.2004 while the present suit was filed on 07.07.2014.

9. Further, as per the plaintiff-appellants the possession of the suit integrity of this judgment/order.

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house was given to them at the time of execution of the agreement to sell, as is mentioned therein. The agreement to sell dated 14.06.2004 vide which possession was also delivered to the plaintiff-appellants is an unregistered document and such an unregistered document cannot be accepted being in contravention of the provisions of the Registration Act, 1908. It is well settled that that a transfer of immovable property by way of sale can only be by a deed of conveyance / sale deed.

In Suraj Lamp & Industries (P) Ltd. vs. State of Haryana [(2012)1 SCC 656] it was held :

"18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any integrity of this judgment/order.

2024:PHHC:008314 RSA-5904-2019 (O&M) -6- interest or charge on its subject-matter."

10. Thus, without a stamped and registered deed of conveyance / sale deed, no right, title or interest in immovable property can be transferred. Under the provisions of Section 17 of the Registration Act, 1908 where immovable property of the value of more than 100/- is conveyed, such sale could only be effected by a document of sale duly registered. Section 17(1)(b) of the Registration Act, 1908 mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered and Section 49 of the said Act imposes a bar on the admissibility of an unregistered document and deals with the documents that are required to be registered under Section 17. Section 49 of the Registration Act, 1908 reads thus :

"49. Effect of non-registration of documents required to be registered - No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall -

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or © be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be integrity of this judgment/order.

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registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."

11. Since the agreement to sell dated 14.06.2004 has the effect of creating and taking away the rights in respect of immovable property, it required registration under Section 17 of the Registration Act, 1908. Since the said agreement to sell has not been registered, it cannot be taken into account to the extent of the transfer of the immovable property mentioned therein.

12. In view of the above, I do not find any ground to interfere in the concurrent findings of fact returned by both the Courts below. No question of law much, less any substantial question of law, arises in the present appeal. The appeal, which is wholly devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

23.01.2024
Aman Jain

(ALKA SARI
JUDGE

NOTE: Whether speaking/non-speaking: Speaking Whether reportable: YES/NO integrity of this judgment/order.