

Before Jitendra Chauhan, J.

AMRIK SINGH— Appellant

versus

JASBIR SINGH— Respondent

RSA No. 2748 of 2016

May 31, 2016

A. Transfer of Property Act, 1882 —S. 53A—Registration Act, 1908 —S. 49—Unregistered agreement—Specific performance—Possession delivered in pursuance to unregistered agreement—Person entitled to seek specific performance of agreement—But not entitled to seek protection of possession on basis of unregistered agreement— Finding of Trial Court that unregistered disentitles relief of specific performance does not stand test of judicial scrutiny.

Held that the gist of the aforesaid two authorities is that if a person intends to seek specific performance of an agreement then notwithstanding the fact that the possession was delivered to the transferee in pursuance to the unregistered agreement, yet he is entitled to seek its performance but he cannot seek protection of his possession on the basis of unregistered agreement. In fact, the amendment carried out to Section 53-A TPA applies to the latter part. The rigor of the Registration Act is not applicable for the purpose of suit for specific performance as the document itself does not create, declare, extinguish any right in the immovable property worth Rs.100/- or upward. This being so, the finding recorded by the trial Court that since the agreement was unregistered. Therefore, the plaintiff was not entitled to the main relief of specific performance does not stand the test of Judicial Scrutiny. The same is erroneous and is set aside. However, the lower Appellate Court while declining the relief of specific performance observed that there was a gap of three years in between the date of agreement to sell and the date of execution and registration of the sale deed. In the considered opinion of this Court. The gap is unusual.

(Para 12)

B. Specific performance—Stipulation of time—Parties free to stipulate any condition in agreement with regard to time of performance Court to uphold same unless forbidden by law—Condition of execution after gap of three years, however, creates

doubt—Relief o specific performance discretionary relief—Relief of specific performance rightly declined by Courts below—Appeal dismissed.

Held that this Court is alive to the proposition that the parties are free to stipulate any condition in their agreement with regard to time of performance and the Court will upheld the same unless it is found to be forbidden by some law. The condition of execution of sale deed after a gap of three years creates doubt in the mind of the Court. Relief of specific performance is a discretionary relief.

(Para 12)

Karamjit Singh Mangat, Advocate, *for the appellant.*

JITENDRA CHAUHAN, J.

(1) The challenge in the instant second appeal is to the judgment and decree dated 24.09.2014, passed by learned Civil Judge (Junior Division), Batala (in short, 'the trial Court'), whereby suit filed by the plaintiff-appellant, for specific performance of agreement to sell dated 19.06.2008, or in the alternate, suit for recovery of Rs.1,00,000/- by way of refund of earnest money along with compensation and damages was partly decreed; and to the judgment and decree dated 30.01.2016, passed by learned Additional District Judge, Gurdaspur (in short, 'the first appellate Court') vide which appeal filed by plaintiff-appellant was dismissed.

(2) It is the case of the plaintiff-appellant the defendant had entered into agreement to sell dated 19.06.2008 in favour of the plaintiff-appellant qua the suit property and it was agreed to execute the sale deed on or by 18.06.2011. The defendant received Rs.50,000/- as earnest money and it was agreed between the parties that the balance consideration amount shall be paid at the time of execution of the sale deed. The plaintiff always remained ready and willing to perform his part of the contract, but the defendant committed breach of contract and was not ready and willing to do so. It is the further case of the plaintiff-appellant that he went to Tehsil Office, Batala, on 20.06.2011 (18.06.2011 and 19.06.2011 being Saturday and Sunday, respectively), along with the balance amount but the defendant did not turn up. The plaintiff-appellant also got his presence marked by way of an affidavit. It was agreed between the parties that in case, the plaintiff refused to purchase the suit land, the earnest money of Rs.50,000/- shall remain forfeited and in case, the defendant failed to execute the sale deed in favour of the plaintiff, then the defendant would have to pay an

additional amount of Rs.50,000/- as damages.

(3) In his written statement, the defendant-respondent denied any such agreement to sell between the parties. It was further averred that the alleged agreement is an unregistered document, therefore, not binding upon the defendant-respondent.

(4) The plaintiff-appellant also filed replication, wherein, the averments made in the written statement were denied, whereas, those contained in the plaint were reiterated.

(5) After hearing learned counsel for the parties and appreciating the evidence brought on record, learned trial Court decreed the suit of the plaintiff for alternate relief of recovery of Rs.1,00,000/- along with simple interest @ 6% per annum along with costs.

(6) Feeling aggrieved, the plaintiff-appellant preferred first appeal which was dismissed.

(7) Still dissatisfied, the plaintiff-appellant has approached this Court.

(8) Learned counsel for the appellant contends that the learned Courts below erred in dismissing the suit of the plaintiff for specific performance of agreement dated 19.06.2008 on the ground that it was an unregistered document. It is contended that the part performance of the agreement is duly proved on record as also the fact that the possession of the suit land has been delivered vide agreement dated 19.06.2008, therefore, the non-registration of the said agreement is of no consequence. He cites *Haroon versus Kailey Khan*¹. It is further contended that the date for execution of the sale deed i.e. three years from the date of agreement, was mutually fixed by the parties. He cites *Baldev Singh (deceased) through LRs versus Harbhajan Singh and others*², to contend that delay cannot be made a ground to exercise discretion under Section 20 of the Specific Relief Act by granting compensation and denying the main relief to the plaintiff.

(9) I have heard learned counsel for the appellant and gone through the case file.

(10) So far as the first contention raised by the learned counsel for the appellant is concerned, this Court finds that there is a merit

¹ 2016 (2) R.C.R. (Civil) 626 (P&H)

² 2015 (3) Civil Court Cases 416 (P&H)

in the contention and the same deserves acceptance. The question whether an unregistered agreement can be a base of a suit for specific performance or not was answered by Hon'ble Division Bench of this Hon'ble Court in **Ram Kishan and another versus Bijender Mann alias Vijender Mann and others**³. The Division Bench held as under:-

“We, therefore, hold that:

(a) a suit for specific performance, based upon an unregistered contract/agreement to sell that contains a clause recording part performance of the contract by delivery of possession or has been executed with a person, who is already in possession shall not be dismissed for want of registration of the contract/agreement;

(b) the proviso to Section 49 of the Registration Act, legitimizes such a contract to the extent that, even though unregistered, it can form the basis of a suit for specific performance and be led into evidence as proof of the agreement or part performance of a contract.

We, therefore, express our respectful disagreement with the judgment in Gurbachan Singh vs. Raghubir Singh (*supra*) and the judgment in Mool Chand Mindhra vs. Smt. Indu Bala, P.L.R., 378 (RSA No.2056 of 2011). The reference is answered accordingly. The appeal be set down for hearing, as per roster.”

(11) Further a Single Bench of this Court in **Haroon versus Kaley Khan**⁴, while relying upon the judgment of the Hon'ble Division Bench in **Ram Kishan's case** (*supra*) held that an unregistered agreement to sell, even if possession is handed over to the transferee, can be the base of a suit for specific performance.

(12) The gist of the aforesaid two authorities is that if a person intends to seek specific performance of an agreement then notwithstanding the fact that the possession was delivered to the transferee in pursuance to the unregistered agreement, yet, he is entitled to seek its performance but he cannot seek protection of his possession on the basis of unregistered agreement. In fact, the amendment carried out to Section 53-A TPA applies to the latter part. The rigor of the Registration Act is not applicable for the purpose of suit for specific

³ 2013(2) R.C.R.(Civil 419 : 2013(1) PLR 195

⁴ 2016(2) RCR (Civil)

performance as the document itself does not create, declare, extinguish any right in the immovable property worth Rs.100/- or upward. This being so, the finding recorded by the trial Court that since the agreement was unregistered, therefore, the plaintiff was not entitled to the main relief of specific performance does not stand the test of judicial scrutiny. The same is erroneous and is set aside. However, the lower Appellate Court while declining the relief of specific performance observed that there was a gap of three years in between the date of agreement to sell and the date of execution and registration of the sale deed. In the considered opinion of this Court, the gap is unusual. In the normal circumstances, the parties keep the gap of three to six months in between the date of agreement to sell and the date of execution of the sale deed. While observing so, this Court is alive to the proposition that the parties are free to stipulate any condition in their agreement with regard to time of performance and the Court will uphold the same unless it is found to be forbidden by some law. The condition of execution of sale deed after a gap of three years creates doubt in the mind of the Court. Relief of specific performance is a discretionary relief. In *Gobind Ram versus Gian Chand*⁵ it is held as under:-

“It is the settled position of law that grant of a decree for specific performance of contract is not automatic and is one of discretion of the **Court** and the **Court** has to consider whether it will be **fair**, just and equitable **court** is guided by principle of justice, equity and good conscious. The **Court** should meticulously consider all facts and circumstances of the case and motive behind the litigation should also be considered.”

(13) In the instant case, both the Courts below have rightly exercised the discretion. Therefore, the relief of specific performance was rightly declined by the Courts below. This Court finds itself in agreement with the view taken by the lower Appellate Court.

(14) There is no substantial question of law in the present regular second appeal. Consequently, the same is dismissed.

Ritambhara Rishi

⁵ AIR 2000 SC 310