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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE HIRDESH
ON THE 15th OF SEPTEMBER, 2023
SECOND APPEAL No. 1258 of 2021**

BETWEEN:-

**SULEMAN S/O AHMED NOOR, AGED ABOUT 55 YEARS,
OCCUPATION: BUSINESS R/O KUKSHI DISTRICT DHAR
(MADHYA PRADESH)**

.....APPELLANT

(SHRI MURTUZA BOHRA, LEARNED COUNSEL FOR THE APPELLANT)

AND

**NARENDRA KUMAR S/O LATE SUKHDEV BHAWSAR,
AGED ABOUT 53 YEARS, OCCUPATION: BUSINESS R/O
ANNAPURNA COLONY, KUKSHI, DISTRICT DHAR
(MADHYA PRADESH)**

.....RESPONDENT

**(SHRI BURHANUDDIN AZAD, LEARNED COUNSEL FOR THE
RESPONDENT)**

.....
*This appeal coming on for admission this day, the court passed the
following:*

ORDER

Heard on the question of admission.

This present second appeal is filed by the appellant/plaintiff under Section 100 of the Code of Civil Procedure (hereinafter referred to as 'CPC') against the judgment and decree dated 19.02.2021 passed by the learned II Additional District Judge, Kukshi, district Dhar in Regular Civil Appeal No.3A/2019 affirming the judgment and decree dated 29.11.2018 passed by the learned Civil Judge, Class-II, Kukshi, district Dhar in civil suit no.200001A/2013

whereby the plaintiff/appellant's suit for specific performance of contract and permanent injunction has been dismissed.

2. The brief facts of the case is that the plaintiff/appellant filed a civil suit for declaration of title and permanent injunction with respect to plot no.20 Section E, 40 x 50 sq ft. situated at Survey Nos.244/2, 244/6, 244/7, 244/8 total area 3.418 sq.ft at Kukshi, district Dhar against the respondent. It is further pleaded that late Sukhdev father of the defendant executed one sale deed dated 09.04.1990 with respect to the suit property in favour of the plaintiff after receiving the total sale consideration and delivered the possession of the suit property to the plaintiff/appellant. Since then the plaintiff is in possession of the suit property. One notice was also issued for demand of diversion tax to the plaintiff. After some time the defendant refused to honour the agreement and intimidated to sell the land to the third party. Thereafter the plaintiff/appellant filed a civil suit and prayed for grant of permanent injunction and declaring the title of the suit property.

3. The respondent has denied the averments of the plaint in the written statement and pleaded that his father never executed the sale deed in respect of the suit property in favour of the plaintiff and that deed was forged and his father never delivered the possession of the suit property in favour of the plaintiff and the defendant is continuously in possession of the suit property and prays for dismissal of the suit. The trial Court after framing the issues and recording evidence of both the parties had dismissed the suit. Being aggrieved by the said judgment and decree the appellant/plaintiff preferred an appeal before the first appellate Court and the first appellate Court vide the impugned judgment and decree affirmed the judgment and decree passed by the trial Court. Against the impugned judgment and decree of the first appellate Court,

the present appeal has been filed.

4. Learned counsel for the appellant submitted that the judgment and decree passed by both the Courts below are illegal, not based on proper appreciation of evidence, failed to consider the oral and documentary evidence produced by the plaintiff/appellant. The impugned judgment is perverse in fact and law, therefore, deserves to be set aside. He further submitted that he filed a suit for declaration and injunction in respect of suit property, but the trial Court in para 1 of the judgment wrote this suit is filed for specific performance and permanent injunction, therefore, the findings of both the Courts below are perverse and against the evidence available on record. In the light of the aforesaid, learned counsel for the appellant submits that the appeal deserves to be admitted on the substantial questions of law proposed by the appellant.

5. Heard learned counsel for the parties and perused the record.

6. The first point argued by the learned counsel for the appellant is that he filed a suit for declaration and permanent injunction in respect of the suit property, but the trial Court in his judgment in para 1 wrote that this suit is filed for specific performance and permanent injunction, so the trial Court has drawn wrong inference in respect of the suit filed by the appellant/plaintiff, but on perusal of the first appellate Court judgment, this contention is elaborately discussed in para 21 by holding that this error is not material and no prejudice will be caused to the appellant/plaintiff.

7. Learned counsel for the appellant argued that the appellant/plaintiff filed suit for declaration of the suit property and submitted that father of the defendant executed a sale deed on 09.04.1990 in favour of the plaintiff.

8. On perusal of the document Ex.P-1 this document is an agreement to

sell and not a sale deed and it is an unregistered document.

Section 54 defines the "Sale" of immovable property.- 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 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."

9. In the case of **Meghmala Vs. G.Narasimha Reddy** reported in **(2010) 8 SCC 383** it is held that an agreement to sell does not create any right or title in favour of the intending buyer. In the case of **Suraj Lamp and Industries Pvt.Ltd. Vs. State of Haryana** reported in **JT 2011 (12) SC 654** it is held that 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.

10. Section 17 of the Registration Act, 1908 also provides the registration of document. Section 17 reads as under:-

17. Documents of which registration is compulsory.

—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

- (a) instruments of gift of immovable property;
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest,

whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

11. Section 49 of the Registration Act, 1908 reads as under:-

"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

(c) 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 registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.]

12. So on perusal of the provisions of Section 54 of the Transfer of Property Act, Sections 17 and 49 of the Registration Act it is clear that no right, title or interest in immovable property can be transferred without registration of the sale deed.

13. Learned counsel for the appellant's contention that it is a sale deed

as per the above discussion is not found to be correct. In view of the above provisions it is found that it is only an agreement to sell and this document Ex.P-1 does not confer any right, title or interest to the plaintiff/appellant.

14. Learned counsel for the appellant submits that the Courts below erred in holding that the suit was time barred. Ex.P-1 was executed between the parties on 09.04.1990 and on perusal of the pleadings it is never found that the plaintiff was ready and willing for performance of the sale deed in respect of the suit property and could not notice the respondent/defendant to execute the sale deed in favour of the plaintiff.

15. Clause 54 of PART II of The Schedule of the period of Limitation under the Limitation Act, 1963 provides that for specific performance of a contract the period of limitation is three years from the date fixed for performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

16. In the present case, plaintiff had not adduced any evidence that he gave notice to the defendant for executing the sale deed in favour of the plaintiff and he was ready and willing for performance of the sale deed in respect of the suit property. So, the Courts below have rightly held that the suit is time barred.

17. Learned counsel for the appellant further submitted that both the Courts below have erred that the plaintiff is not in possession of the suit property. In the present case, both the Courts below have recorded finding that plaintiff is not in possession of the suit property. The concurrent findings recorded by the Courts below are based on proper appreciation and assessment of the oral and documents on record.

18. In the case of **Mohanlal Vs. Nihal Singh** reported in (2001) 8

SCC 584 the Hon'ble Apex Court held that the question of possession of the suit land is essentially one of the fact.

19. The trial Court as well as the first appellate Court on appreciation of oral and documentary evidence on record declined to accept the case of the plaintiff that he was in possession of the suit property. The trial Court has recorded a positive finding based on the documents and oral evidence led by the defendant that defendant is in possession of the suit property continuously. The first appellate Court which is the final Court of fact has affirmed the finding of the trial Court regarding the defendant's possession over the suit land. The question raised before this Court relating to possession there is hardly any scope of interference in the finding of possession concurrently recorded by the Courts below within the limited parameters of Section 100 of the CPC by this Court.

In such circumstances, no substantial question of law arises for consideration in this present appeal. The appeal being devoid of any merit is accordingly dismissed. No order as to costs.

(HIRDESH)
JUDGE