

**IN THE HIGH COURT OF PUNJ AB AND HARYANA AT CHANDIGARH****109****RSA-6241-2018 (O&M)****Date of Decision : 29.01.2025**

Ashok Kumar Dawar @ Ashok Dawar

....Appellant

VERSUS

Sanjay Kumar and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajesh Bansal, Advocate for the appellant.

ALKA SARIN, J. (Oral)**CM-17501-C-2018**

1. For the reasons stated in the application, the same is allowed.

The delay of 18 days in filing the present appeal is condoned.

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2. Present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 09.09.2015 passed by the Trial Court and the judgment and decree dated 18.05.2018 passed by the First Appellate Court.

3. The brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed a suit for permanent injunction averring therein that the house in question was allotted to Sanjay Kumar (defendant-respondent No.1 herein) by defendant-respondent No.3 vide allotment letter dated 10.02.2004/16.02.2004. On 09.03.2004 the defendant-respondent No.3 handed over actual physical possession of the house in question to

defendant-respondent No.1. It was further the case set up that defendant-respondent No.1 wanted to sell the house in question through defendant-respondent No.2 and that the plaintiff-appellant was willing to purchase the house and contacted the property dealer of the locality. Defendant-respondent No.2 is stated to have played a vital role and showed the original documents to the plaintiff-appellant. It was further averred that on the basis of the documents shown, an agreement to sell was entered into by defendant-respondent No.1 with the plaintiff-appellant on 10.08.2004. A general power of attorney was also alleged to have been executed but the same could not be registered because of the ban by the Government of Haryana. It was further the allegation that the entire sale consideration of Rs.2,37,000/- was paid by the plaintiff-appellant to defendant-respondent No.1 at the time of execution of the agreement to sell dated 10.08.2004 and all the original documents were handed over to the plaintiff-appellant. It was further averred that the possession of the house was also handed over at the time of execution of the agreement to sell. It was further the case set up that all the installments were also deposited by the plaintiff-appellant. In August 2013 the defendant-respondent Nos.1 and 2 tried to sell the house in question to some other person. The plaintiff-appellant filed an application on 02.09.2013 in the office of the defendant-respondent No.3 stating the above-mentioned facts. On 15.11.2013 the plaintiff-appellant is alleged to have received letter dated 12.11.2013 in which it was stated that Sanjay Kumar (defendant-respondent No.1 herein) had moved an application that he never entered into any agreement to sell with any person and requested for execution of the

conveyance deed in his favour. On 25.11.2013 the plaintiff-appellant is alleged to have approached defendant-respondent No.3 and shown all the original documents. Hence, the present suit for restraining defendant-respondent No.3 from transferring the disputed house in favour of defendant-respondent No.1. Defendant-respondent No.1 filed his written statement and contested the suit denying the agreement to sell. It was admitted that defendant-respondent No.2 was an employee of the Housing Board. It was averred that the defendant-respondent No.2 and the plaintiff-appellant in collusion with each other fabricated the documents only in order to grab the property of the defendant-respondent No.1. Even receiving of any sale consideration amount was denied. It was further the case set up that the defendant-respondent No.2 in collusion with plaintiff-appellant had handed over the original documents to the plaintiff-appellant and that the defendant-respondent No.1 was in actual possession of the house in question since the time of taking possession. All the installments had also been paid by the defendant-respondent No.1 himself. Defendant-respondent No.2 was proceeded against *ex parte*. Separate written statement was filed by defendant-respondent No.3 averring therein that the possession of the house was given to defendant-respondent No.1 on 09.03.2004 and on 06.08.2013 the defendant-respondent No.1 filed an application alongwith copy of the FIR regarding the allotment letter and other documents being misplaced. Replication was filed.

4. On the basis of the pleadings of the parties the following issues were framed :

1. Whether plaintiff is entitled to relief of permanent injunction as prayed for ? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
3. Whether the plaintiffs have no locus standi and cause of action to file the present suit ? OPD
4. Relief.

5. The Trial Court dismissed the suit vide judgment and decree dated 09.09.2015. Aggrieved by the same an appeal was preferred, which was also dismissed by the First Appellate Court vide judgment and decree dated 18.05.2018. Hence, the present regular second appeal.

6. Learned counsel for the appellant would contend that both the Courts have erred in dismissing his suit. It is urged that the plaintiff-appellant had paid the entire amount and the original documents were handed over to him. It is further the contention that even the installments were paid by the plaintiff-appellant and he was in possession.

7. Heard.

8. In the present case both the Courts concurrently found that in the agreement to sell (Ex.P1) there was no recital regarding handing over possession of the house in question. Not an iota of evidence was led by the plaintiff-appellant to establish his possession over the house in question. It is trite that in a suit for permanent injunction it is incumbent upon the plaintiff to prove his possession, which the plaintiff-appellant woefully failed to prove in the present case. Rather from the certificate (Ex.P3) it is established

that defendant-respondent No.1 came in possession of the house in question on 09.03.2004. Further, when the plaintiff-appellant stepped into the witness-box as PW-1 he stated that the house is lying locked. However, he could not say whether it was locked by him or by Sanjay Kumar (defendant-respondent No.1 herein). The prayer in the suit that defendant-respondent No.3 should not execute the conveyance deed in favour of defendant-respondent No.1 is also bereft of any merit. Defendant-respondent No.1 is the rightful owner of the house in question and by filing the present suit for permanent injunction the defendant-respondent No.3 cannot be enjoined from executing the conveyance deed in favour of defendant-respondent No.1 merely on the basis of an alleged agreement to sell in favour of the plaintiff-appellant.

9. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

29.01.2025
jk

(**ALKA SARIN**)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO