

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2055 of 2009 (O&M)
Date of Decision: 18.12.2015

M/s The Subhash Woolen Mills Pvt. Ltd.

.....Appellant

Vs

Ashok Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the appellant.

Mr. M.L. Sagar, Senior Advocate,
Mr. Chetan Mittal, Senior Advocate
Mr. R.S. Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate and
Mr. Udit Garg, Advocate
for the respondents.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Plaintiff has filed this appeal against judgment and decree dated 08.04.2009 passed by Additional District Judge, Ludhiana, vide which appeal of the defendants against the judgment and decree dated 16.03.2007 passed by Civil Judge (Jr. Divn.) Ludhiana was accepted.

[2]. Plaintiff filed suit for permanent injunction restraining

the defendants from interfering in peaceful possession of the plaintiff or taking forcible possession of factory premises and open space within boundary wall measuring 21 Kanals 13 Marlas and also restraining the defendants from alienating or transferring the portion of suit land to anybody except the plaintiff on receipt of balance payment or in alternative, suit for declaration that plaintiff has become owner of the property by way of adverse possession.

[3]. Plaintiff alleged that it is a Company incorporated under the law with the Registrar of the Firm and Subhash Kejriwal is one of the Director. He has been authorised to file the suit by resolution of the Board of Directors.

[4]. Plaintiff entered into an agreement with the defendants and Paramjit Kaur wife of Shamsher Singh through Shamsher Singh for the purchase of land measuring 27 Kanals 9 Marlas in January 1975. Rate of land was settled as 24.63 per sq. yards and land measuring 10 *Kanals* 3 *Marlas* i.e. 6141 sq. yards owned by Shamsher Singh defendant abutting the road and @ of Rs.18.37 per sq. yards of the back portion of the remaining land measuring 17 *Kanals* 6 *Marlas* i.e. 10467 sq. yards.

[5]. Pursuant to the agreement, sale deeds were executed. Shamsher Singh executed sale deed dated 28.04.1975 in respect of 2 *Kanals* 11 *Marlas* i.e. 1543 sq. yards for a total sale

consideration of Rs.38,000/-. The area agreed to be sold was 10 *Kanals* 3 *Marlas* i.e. 6141 sq. yards. Jasbir Kaur sold 3 *Kanals* 4 *Marlas* i.e. 1936 sq. yards vide registered sale deed dated 28.04.1975 for a total sale consideration of Rs.37,000/-. The area agreed to be sold was 6 *Kanals* 8 *Marlas* i.e. 3872 sq. yards. Jaswinder Kaur sold 4 *Kanals* 2 *Marlas* i.e. 2481 sq. yards vide registered sale deed dated 28.04.1975 for a total sale consideration of Rs.46,500/-. The area agreed to be sold was 8 *Kanals* 4 *Marlas* i.e. 4961 sq. yards. Similarly Paramjit Kaur sold 2 *Kanals* 14 *Marlas* i.e. 1634 sq. yards vide registered sale deed dated 28.04.1975 for a total sale consideration of Rs.30,000/-. The area agreed to be sold was 2 *Kanals* 1 *Marla* i.e. 1634 sq. yards.

[6]. In this way sale deeds of the area measuring 7594 sq. yards were executed by the defendants. The plaintiff has paid an amount of Rs.2,01,500/- through cheques. Amount of Rs.15,873/- is outstanding against the defendants on account of extra payments made towards purchase of stamps and registration charges. After adjustment of sale price of Rs.1,51,500/- an amount of Rs.65,873/- still remains outstanding with the defendants as advance sale consideration of remaining land as agreed to be sold.

[7]. Later on defendant No.1 told that their concern M/s

Union Forging needed some more area for expansion of the factory and land adjoining to the property was left with the promise that they would execute the sale deed of the remaining land. Plaintiff left the land measuring 3510 sq. yards i.e. 5 *Kanals* 16 *Marlas* falling behind M/s Roamer Woolen Mills and adjoining M/s Union Forging and the same has been included in the factory premises of M/s Union Forging. They have paid the sale price of this land to the defendants. Now only 1 *Kanal* 10 *Marlas* i.e. 906 sq. yards belonging to defendant No.2 remains to be sold for which sale deed is to be executed. Possession of the land was given by the defendants to the plaintiff-Company in June 1975 and with the consent of defendants boundary wall was constructed, covering the area of 1 *Kanal* 10 *Marlas* also. The shed 210' x 71' was raised and machinery was installed therein.

[8]. The defendants have not executed the sale deeds of these remaining areas till date, despite receiving the sale price. At a later stage, defendant No.1 also gave possession of land measuring 7 *Kanals* 12 *Marlas* shown in green colour. Still an amount of Rs.49,340/- remains towards defendants as excess amounts after adjustment of cost of land 1 *Kanal* 10 *Marlas* which comes to Rs.16,583/-. The defendants have already received full consideration of land shown in red and Rs.49,340/-

against the land shown in green and thus have no right in the land shown in red and green colours in the site plan except balance amount of Rs.63,958/-.

[9]. On execution of sale deeds and in case defendants deny these agreements and adjustments, the plaintiff has become owner of land by adverse possession as the plaintiff-company is in possession of land shown in red and green since July 1975 onwards continuously and without any hindrance as owners to the very knowledge of the defendants.

[10]. Plaintiff called upon the defendants to execute the sale deeds of remaining land, but the defendants are putting of the matter for one pretext or the other. The plaintiff is owner of the adjoining factory known as M/s S.S. Woolen Mills which is sister concern of the plaintiff-Company. Some of the Directors of plaintiff Company are also partners of the said factory. With this background, the suit came to be filed.

[11]. The suit has been contested by the defendants on all counts. Defendants are owner of huge agricultural lands and they had sold part of the land to the plaintiff out of their joint *khatas*. Possession was also delivered to the plaintiff at the time of execution of sale deeds. The plaintiff has raised construction for its factory on the land sold to it. Plaintiff has no concern with the other land. Agreement to sell in respect of 27 Kanals 9

Marlas at the rate of Rs.24.63 per sq. yards has been denied. Plaintiff did not produce the alleged agreement to sell. Defendants denied that there was any agreement to sell and sale deeds were executed in part performance of the agreement to sell. Defendants admitted that they have sold some portion of the land out of their joint *khatas* and have also delivered possession thereof at the spot by removing crops and the plaintiff has raised construction thereupon.

[12]. The sale deeds were executed for a lesser amount as the stamp and registration expenses were to be borne by the plaintiff. Plaintiff has paid only the price of the land sold by the defendants and no excess amount has been paid to them. The defendants have also denied that a sum of Rs.65,873/- is still outstanding towards defendants as advance sale price of the remaining land. It has also been denied that plaintiff has left land measuring 3510 sq. yards behind M/s Roamer Woolen Mills and adjoining M/s Union Forgings. It has also been denied that only 906 sq. yards of land remains to be sold in favour of the plaintiff. The defendants have also denied that the possession of the land was given to the plaintiff in June 1975 and the plaintiff have constructed boundary wall on this land measuring 1 Kanal 10 Marlas and have also constructed shed measuring 210' x 271'. The shed is separate from the land by

the foundations and the wall constructed over the land purchased by the plaintiff.

[13]. Defendants have denied that the amount of Rs.49,340/- remained as excess amount with the defendants after adjustment of the cost of the land measuring 1 *Kanal* 10 *Marlas* amounting to Rs.16,503/-. It has also been denied that plaintiff has any right in the disputed land shown in red and green colour. Defendants have also denied that they are only entitled to a balance of Rs.63,958/- in execution of the sale deeds.

[14]. Defendants never entered into agreement to sell their lands and, therefore, execution of any sale deed does not arise. Defendants are in possession of the land and the plaintiff is not entitled to any possession or he has become owner by adverse possession.

[15]. After filing replication, following issues were framed by the trial Court:-

- “1. *Whether the plaintiff is in possession of the property in dispute? OPP*
2. *Whether the plaintiff is entitled for injunction as prayed for? OPP*
3. *Relief.”*

[16]. Additional issues No.2A to 2C were also framed on 18.04.1998 as under:-

- “2A. *Whether the plaintiff entered into an*

agreement with the defendants to purchase land as mentioned in para No.2 of the plaint? OPP

2B. Whether the plaintiff has become owner by way of adverse possession? OPP

2C. Whether the plaintiff can protect the possession and title created U/s 53A of the Transfer of Property Act? OPP”

[17]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[18]. Trial Court discussed the issues No.1, 2 and 2A together and held the same in favour of plaintiff-Company. Issue No.2B was decided against the plaintiff-Company and in favour of defendants. The issue No.2C was decided against the plaintiff. Trial Court decreed the suit partly for permanent injunction, restraining the defendants from interfering into the peaceful possession of the plaintiff-Company or taking forcible possession of the premises from the plaintiff-Company illegally and forcibly except in due course of law. Trial Court dismissed the suit for declaration that the plaintiff-Company has become owner of the land by adverse possession.

[19]. Defendants filed appeal against the judgment and decree passed by the trial Court, decreeing the suit of the plaintiff partly to the extent of granting decree for permanent injunction. The lower Appellate Court allowed appeal vide

judgment and decree dated 08.04.2009, thereby reversing the findings recorded by the trial Court under issues No.1, 2 and 2A. The suit of the plaintiff for permanent injunction was also dismissed.

[20]. Appellant has framed the following substantial questions of law in para No.18 of the grounds of appeal:-

- “i). Whether the finding of the learned 1st Appellate Court that plaintiff is not in possession of the suit land is perverse?*
- ii) Whether the impugned judgment and decree dated 8.4.2009 passed by the learned 1st Appellate Court is liable to be set aside the same being based on misreading of evidence?*
- iii) Whether in view of admission of DW-8 that plaintiff is in possession of the suit land, the suit of the plaintiff ought to have been decreed?*
- iv) Whether oral evidence of oral agreement can be discarded for want of documentary proof?*
- v) Whether respondent in appeal can challenge the finding rendered by the Trial Court under Order 41 Rule 22 CPC?*
- vi) Whether the plea of adverse possession is contradictory to the plea of vendee being put in possession at the time of oral agreement to sell in view of protection of Section 53-A of the Transfer of Property Act being not available due to oral agreement?*

vii) *Whether the plaintiff in possession of the suit property is not entitled to injunction that he be not dispossessed except in due course of law?"*

[21]. I have heard the arguments of both the sides and have also perused the record.

[22]. Learned Senior counsel for the appellant has tried to extract help from the cross-examination of DW-6 Davinder Singh Garcha son of Shamsheer Singh to the effect that he cannot say as to how much area was the subject matter of sale to the plaintiff-Company. He cannot admit or deny whether original area to be sold to the plaintiff-Company was 27 *Kanals* 9 *Marlas*. The witness also admitted that he cannot re-collect the amount spent by the plaintiff. He admitted that some area was exchanged by the plaintiff and he cannot say that area of 5 *Kanals* 16 *Marlas* was left out of the contracted area.

[23]. Learned Senior counsel for the appellant further relied upon the recital Ex.PW5/1 of the sale deeds wherein it has been recited that no balance consideration remained due and possession has been delivered to the purchaser by cutting crops in *Rapat* No.16 Ex.PW6/2. The Manager of the plaintiff-Company lodged the information on 24.01.1987 at 11.30 a.m. that the complainant came present in the Police Station and moved an application. The subject matter of which was that

Shamsher Singh along with some other persons have dismantled the boundary wall of the factory and have entered into factory premises forcibly which is in possession of the plaintiff for the last 13 years and threw away the raw material lying there. A request was made to the Police to lodge the FIR.

[24]. Learned Senior counsel for the appellant also relied upon statement of DW-7 Apinder Singh, wherein he has admitted that he used to visit the property daily. 1½ acres of land was sold by Shamsher Singh to his mother and other owners of the plaintiff-Company. The possession was also delivered to the plaintiff. The plaintiff has raised boundary wall around the factory premises. In his cross-examination witness has admitted that his mother is alive. The partition and exchange was effected with Subhash, but the witness did not know when the same took place. He also pleaded ignorance about terms and conditions of exchange and partition. The plaintiff has raised construction of the boundary wall of the factory, built in the year 1980 and he is in continuous possession of the same. On the strength of this evidence, plaintiff seeks to build his case.

[25]. On the other hand, learned Senior counsel for the respondents/defendants submitted that the plaintiff is to stand on his own legs and cannot take benefit from the weakness of

the defendants' case. There is no recital in the sale deed about oral agreement to sell *qua* the entire area. Learned Senior counsel relied upon statement of Subhash Kejriwal PW-8 wherein he has deposed on the basis of resolution of the plaintiff-Company ExPW8/1. According to the witness, talk in respect of purchase of land first took place in January, 1975. Rate in respect of the land falling in front was settled as Rs.24.63 per sq. yards, whereas for the land falling at the back side of the same the rate was fixed as Rs.18.37 per sq. yards. The negotiations took place between Satya Narain and defendant Shamsheer Singh. Satya Narain was authorised in this regard by way of resolution Ex.PW3/3. The amount was given to the defendants besides Rs.30,000/- for purchase of stamp and entries were made in the accounts. The plaintiff has brought on record the *Jamabandi* of the disputed land Ex.PW8/4 and Ex.PW8/5.

[26]. In cross-examination the aforesaid witness has admitted that he became Director of the plaintiff-Company after 1976-77-78 and he had no personal knowledge as to the negotiation which took place in respect of disputed land. Witness was not present when Satya Narain had a talk with the defendants in respect of land in question. There was no written agreement to sell in respect of purchase of land measuring

16500 sq. yards which allegedly took place with the plaintiff-Company. The witness further admitted that except resolution dated 27.01.1975 in respect of disputed land, no other resolution is available with the plaintiff. He fairly conceded that there is no mention as to the possession of the disputed land in the proceedings relating to January 1975. The witness further conceded that there is no wall covering the disputed land towards the side of the road. Only a barbed wire is present and the land is lying vacant. The witness has categorically admitted that except the land covered under the registered sale deeds, plaintiff-Company is not in possession of any other land. With reference to site plan Ex.PW8/3 he stated that from point F to F-1 which is dining room, there is no foundation in the photograph showing the disputed area. No raw material is visible.

[27]. From the above stated position, no inference of remaining area to be sold to the plaintiff can be made out and the lower Appellate Court has rightly reversed the factum of possession over the left out area by the plaintiff.

[28]. The questions as formulated do not arise inasmuch as that in view of conceded position in the statement of Subhash Kejriwal PW-8, no such possession can be inferred in favour of the plaintiff. Question No.(ii) is a question of fact. Question

No.(iii) has an explanatory note in view of the fact that the statement of the plaintiff as Subhash Kejriwal PW-8 has to be given precedence over the statement of the defendants inasmuch as that the plaintiff has to stand on his own legs. The plaintiff cannot take the benefit of the weakness of the defendants. PW-8 while appearing in the witness box has conceded that except the land covered under the sale deed, plaintiff-Company is not in possession of any other land. *Qua* area purchased by different sale deeds plaintiff has constructed boundary wall and *qua* remaining land there is no such possession on behalf of the plaintiff-Company. Once the statement of the plaintiff is categorical in nature, no other evidence can be seen in the said context. Therefore, question No.(iii) does not arise.

[29]. Question No.(iv) is a question of fact. Oral evidence has been rightly appreciated by the lower Appellate Court. Even as per documentary evidence on record, there is no resolution available on record except the resolution dated 27.01.1985 and the oral evidence viz-a-viz. the statement of Satya Narain and defendants cannot be given precedence over and above the documentary evidence i.e. only available in the form of resolution dated 27.01.1975. The evidence on record is such that even, if indulgence is shown in terms of Order 41 Rule 22

CPC at the Appellate stage, nothing beneficial can be presumed in favour of the plaintiff.

[30]. So far as question No.(vi) is concerned plaintiff cannot stake its claim on the plea of adverse possession being plaintiff. Once the possession of the plaintiff has not been proved as per conceded position in view of statement of PW-8 himself over the land beyond the sale deed, therefore, the protection in terms of Section 53-A of Transfer of Property Act (for short 'the Act') does not arise. Since there is no other resolution except the resolution dated 27.01.1975 and there is no personal knowledge as to the negotiation with regard to the disputed land viz-a-viz. Satya Narain and defendants, therefore, in view of admission made by PW-8, no such possession can be inferred in favour of plaintiff warranting protection in terms of Section 53-A of the Act.

[31]. Since plaintiff is not proved to be in possession beyond the area purchased by it by dint of different sale deeds, therefore, plaintiff is not entitled to any injunction as prayed.

[32]. In considered opinion of this Court, the lower Appellate Court has not committed any error of jurisdiction in law and has rightly concluded that plaintiff is not entitled to permanent injunction. So far as declaration is concerned, trial Court has already rejected the claim of declaration and no case is made

out to infer any protection in favour of plaintiff under Order 41 Rule 22 CPC.

[33]. Resultantly, this Court does not find any merit in this appeal and the same is accordingly dismissed.

December 18, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**