

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of Decision: September 23, 2015

1. R.S.A.No.2846 of 2011 (O&M)

Bijender & others

...Appellants

Versus

Satya Naryan & others

...Respondents

2. R.S.A.No.2844 of 2011 (O&M)

Jaibir Singh

...Appellant

Versus

Satya Naryan & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

**Present: Mr.Akshay Bhan, Senior Advocate with
Mr.Santosh Sharma, Advocate,
for the appellants in both the appeals.**

**Mr.N.S.Shekhawat, Advocate,
for the respondents in both the appeals.**

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of two Regular Second Appeal Nos.2846 and 2844 of 2011 arising out of Civil Suit No.22 of 2004 titled Jaibir Singh Versus Satya Naryan & others, which has been dismissed and Civil Suit No.474 of 2008 titled as Satya Naryan & others Versus Bijender & others, which has been decreed by both the Courts below.

The trial Court, on the basis of the evidence, dismissed Civil Suit bearing No.22 of 2004, however, decreed Civil Suit No.474 of 2008 and directed the respondent-defendants, to hand over the vacant possession of the suit property to Satya Naryan and others.

Mr.Akshay Bhan, learned Senior Counsel assisted by Mr.Santosh Sharma, Advocate appearing on behalf of the appellants in both the appeals submits, that both the civil suits, aforementioned, were consolidated. Civil Suit No.22 of 2004 was for permanent injunction, whereas Civil Suit No.474 of 2008 was for possession. Both the Courts below have committed an illegality and perversity in decreeing the suit for possession, as the plaintiffs therein, had failed to prove the title of Lekhraj. He further submits that the plaintiffs are none else, but derived the interest in the property, by virtue of sale deed dated 14.5.2001 executed by Bhawani Shankar, who is a beneficiary of the Will dated 3.2.1984 executed by Lekhraj. He further submits that the plaintiffs had failed to prove on record any proof or oral and documentary, to show that Lekhraj was owner, except that the BDPO, Khol Rewari prepared the site plan, which shows that Lekhraj was in possession. Such site plan would not confer any title upon Lekhraj. Since Lekhraj did not have a title and, therefore, he could not have willed away and the subsequent transfer of the property at the hands of Bhawani Shankar would have no value, much less, cannot be treated a valid sale in the eyes of law. He has also drawn the attention of this Court to the cross-

examination of Bhawani Shankar (at page 135 of the trial Court record) to contend that, to a specific question, the said witness admitted that Lekhraj did not own any property in Village Mundi. In view of the said candid admission, it is *ex-facie* proved that Lekhraj did not have title in the property. He further submits that electricity bill would not clothe the status of ownership to Lekhraj and, thus, substantial question of law arises for determination in these appeals. He further submits that even Civil Suit No.22 of 2004 filed for permanent injunction, has erroneously been, dismissed as the appellants had been found in settled possession.

Mr.N.S.Shekhawat, learned counsel appearing on behalf of the plaintiffs in Civil Suit No.474 of 2008 and defendants in Civil Suit No.22 of 2004 submits that there was no issue with regard to the title and ownership of Lekhraj. He has drawn the attention of this Court to issues No.1 and 7-A framed by the trial Court on the basis of the respective pleadings of the parties to the lis, thus, there is no illegality and perversity and, therefore, the appeals are liable to be dismissed.

I have heard the learned counsel for the parties and appraised the paper book.

It would be apt to reproduce issues No.1 and 7-A, which are as under:-

- 1) Whether the plaintiff is owner in possession of the property in dispute? OPP
- 7-A) Whether the plaintiff Satnaryan is owner in

possession of property in question in case titled as Satnarain Vs. Bijender etc.?OPD”

The plaintiffs in Civil Suit No.474 of 2008 have derived the interest and title in the property by virtue of sale deed dated 14.5.2001 executed by Bhawani Shankar, who derived the title on the basis of the registered Will dated 3.2.1984 executed by testator Lekhraj (since deceased).

In my view, the appellant-defendants in Civil Suit No.474 of 2008 could have sought a counter claim to challenge the Will/sale deed. In the absence of challenge to the registered document, appellants cannot be permitted to raise the plea of title in Regular Second Appeal. The registration of the document carries a presumption of truth. It cannot be lost sight of the fact that the Will was also registered. The appellants have failed to prove their possession on the basis of any title, much less, any tenancy.

The plea that the property came to the share of the appellants in Civil Suit No.22 of 2004 from the ancestors has not been proved. It is categoric case of the plaintiffs in Civil Suit No.474 of 2008 that the appellants had forcibly entered into the possession and in this regard, even FIR had also been registered, however, the criminal proceedings resulted into acquittal of the appellants. Be that as it may, the fact remains that the possession of the appellants in the premises was found to be unauthorised.

I do not find any illegality and perversity in the findings rendered by both the Courts below and the same are based on

appreciation of oral and documentary evidence.

It is now settled law that the solitary statement in the cross-examination cannot be read in isolation, but the entire examination-in-chief and cross-examination has to be seen as a whole. I do not find, that the appeals, involve determination of substantial question of law.

The contention of Mr.Bhan that the plaintiffs have not been able to prove the title of Lekhraj, this Court, while exercising the powers under Section 100 CPC, can always examine the matter. I do not find any substance in the aforementioned plea, as no issue with regard to title had been framed, much less, any evidence has been led as to whether Lekhraj was owner in possession of the suit property or not. In the absence of such evidence, I do not wish to ponder upon to adjudicate the title of Lekhraj in the present appeals.

Accordingly, the appeals are dismissed.

September 23, 2015
ramesh

(AMIT RAWAL)
JUDGE