

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 1278 of 2013

Hardev Singh (deceased through LRs) and Others

...Appellants

Versus

Paramjeet Singh and Others

...Respondents

AND

2. Regular Second Appeal No. 3299 of 2013

Paramjeet Singh and Others

...Appellants

Versus

Hardev Singh and Others

...Respondents

Date of Decision: 15.12.2015

CORAM: Hon'ble Mr. Justice Amit Rawal.

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

Present: Mr. Neeraj Jain, Senior Advocate
with Mr. Rajinder Singh Bajwa, Advocate
for the appellants (In RSA-1278-2013) and
for the respondents (In RSA-3299-2013).

Mr. Gorakh Nath, Advocate
for the appellants (In RSA-3299-2013) and
for the respondents (In RSA-1278-2013).

Amit Rawal, J.(Oral)

This order of mine shall dispose of two appeals bearing

Regular Second Appeal Nos. 1278 of 2013 and 3299 of 2013.

**Regular Second Appeal No. 1278 of 2013
And Regular Second Appeal No. 3299 of 2013**

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The Regular Second Appeal No. 1278 of 2013 has arisen out of the decretal of the civil suit seeking possession, whereas Regular Second Appeal No. 3299 of 2013 has been filed against the judgment & decree passed by the lower Appellate Court whereby the appeal filed by the appellant/defendants against the judgment & decree of the trial Court granting mesne profits has been allowed.

For the sake of adjudication, the facts are taken from Regular Second Appeal No. 1278 of 2013. Before advertng to the rival contentions of the parties, it will be apt to give brief preface of the matter.

Avtar Singh son of Surain Singh, along with his brothers, was co-sharer of the suit property. They were in joint cultivating possession of agricultural land bearing khewat No. 247 khatoni No. 367-368 measuring 7 kanals 1 marla to the extent of 1/3rd share i.e. 2 kanals 7 marlas and khewat No. 248 khatoni No. 369 to 375 measuring 312 kanals 4 marlas to the extent of 1364/6244 share i.e. 68 kanals 4 marlas and khewat No.86 khatoni No. 117 to 121 measuring 105 kanals 8 marlas to the extent of 462/2108 share i.e. 23 kanals 8 marlas situated in village Diwana Tehsil Tohana District Fatehabad. The said share was the part of undivided land inherited by descendants of one Surain Singh, namely Darshan Singh, Amrik Singh, Avtar Singh and Gurbax Singh, all sons of Surain Singh. It has come on record that Avtar Singh was permanently settled in Canada sometimes in the year 1969. However, at the back and in the absence of Avtar Singh, his elder brother Darshan Singh allegedly forged and fabricated the power of

attorney dated 26.12.1969 and by virtue of the aforementioned attorney, executed registered lease deed No. 77 dated 2.3.2000 by leasing out, Avtar Singh's share to his sons for a period of 99 years for alleged lease money of ₹ 24,000/- per annum. The contents of the lease deed would show that it was irrevocable as the lessor was debarred from taking back the possession under any circumstances till its expiry. It would not be out of place to mention here that the lease deed do not mention about specific khasra numbers. On coming to know about the aforementioned fraud, Avtar Singh filed a Civil Suit No. 50 dated 12.1.2001 seeking declaration and permanent injunction against Darshan Singh and his sons. The defendants in the aforementioned suit, namely Darshan Singh, Charanjeet Singh and Paramjeet Singh, plaintiffs in the present suit, filed written statement and took up the following stand:

"1. *The plaintiff got huge amount of ₹ 60,000/- before going to abroad for his expenses etc. from the defendant No.1 and in lieu of that the plaintiff surrendered all his right in the land in dispute in favour of defendant No.1 and to save the registration expenses etc. the plaintiff executed a General Power of Attorney in favour of the defendant No.1. The defendant No.1 is cultivating the land in dispute as owner from that very day and the General Power of Attorney was executed by the plaintiff himself in the presence of the witnesses well known to the plaintiff on 22.12.1969. The defendant No.1 who is the just illiterate person was handed over the deed of General Power of Attorney by the plaintiff and told to*

the defendant No.1, that now the plaintiff has no concern with the land in dispute and the defendant No.1 has every right in the land in dispute and can get entries changed in the revenue record as per his sweet will. The possession of the defendant was in the knowledge of the plaintiff which is hostile, continue without any interruption for more than 12 years i.e. 30 years that has been ripened into ownership by way of adverse possession.

4. *The plaintiff has no concern with the land in dispute and the defendant No.1 has every right to alienate the land in dispute. The lease deed executed by the defendant No.1 in favour of the defendant No.2 & 3 is quite legal. The defendant No.1 was cheated by the plaintiff by not mentioning the right of sale in the General Power of Attorney executed by the plaintiff in favour of the defendant No.1 and the plaintiff has took the undue benefits of the illiteracy of the defendant No.1."*

As per the stand taken in the written statement, it has been found that they have set up a plea of adverse possession, in essence, admitted the ownership of Avtar Singh. It is a matter of record that due to intervention of the respectable persons, a compromise dated 13.10.2001 Ex.DW.8/A was recorded. It was agreed that the parties to the compromise had been held to be owners of the particular shares and Avtar Singh and Darshan Singh have become owners in possession of half share each in the remaining land measuring 25 acres. Thereafter, Avtar Singh moved an application for disposal of the suit in terms of the compromise but the same was not disposed of. Ultimately,

the said suit was dismissed as withdrawn on 12.1.2006. During the interregnum, proceedings before the Assistant Collector Grade-II, Jakhal initiated for rectification of the revenue record and order dated 8.7.2002 came to be passed, whereby, it was held that Avtar Singh was owner in possession of the disputed land. It is a matter of record that the said order was assailed by the respondent/plaintiffs by filing an appeal before the competent authority but the same was dismissed for non-prosecution. Thereafter, Avtar Singh sold the land measuring 105 kanals 8 marlas to the present appellant/defendants vide registered sale deed dated 3.9.2002. The respondent/plaintiffs, on 2.3.2006 filed the present suit seeking possession from the appellant/defendants alleging their dispossession in the month of September 2001. Intriguingly, Avtar Singh has not been impleaded in the present suit.

Mr. Neeraj Jain, learned Senior Advocate assisted by Mr. Rajinder Singh Bajwa, Advocate, submits that, a categorical stand was taken in the written statement that once the respondent/plaintiffs had taken a plea of adverse possession, they cannot assume the role of alleged tenants and in support of the present case, has raised multifold arguments, which are summarized as under:-

- A) Once the respondent/plaintiffs have taken a plea of adverse possession in the written statement, they cannot assume the role of tenants alleging their dispossession in the month of September, 2001.
- B) In the replication, the plaintiffs have specifically pleaded that it was Avtar Singh and other persons

who had been dispossessed in the month of September, 2001. He submits that once, in the order dated 8.7.2002, it has been found that Avtar Singh was owner in possession of the disputed land, therefore, they could not allege dispossession in the month of September, 2001 and the sale deed dated 3.9.2002 in favour of the appellant/defendants is legal and valid.

- C) The suit was not maintainable as there is no challenge, much less any declaration has been sought to the registered sale deed dated 3.9.2002.
- D) The terms & conditions of the power of attorney executed by Avtar Singh in favour of Darshan Singh do not recite the power to sell or alienate the property, yet Darshan Singh created a third party right by virtue of irrevocable lease deed leasing out the property in favour of his sons and that too for a period of 99 years.
- E) No cause of action had accrued in favour of the respondent/plaintiffs to file a civil suit for possession as the appellant/defendants had become the owner by virtue of a registered document and in the absence of challenge to the said registered document, the suit, which carries the presumption of truth, for possession was not maintainable as

possession and occupation of the leased property was in the capacity of ownership and not otherwise.

- F) The lease deed did not recite the khasra numbers, therefore, the property was not identifiable. Thus, the suit for possession was not maintainable, as Avtar Singh along with his other brother was co-sharer. In the absence of the identity of the property, the respondent/plaintiffs could not have sought possession of the khasra numbers (under the lease deed) sold by Avtar Singh in favour of the appellant.

It is, thus, submitted that the following substantial questions of law would arise for consideration:-

- I) Whether the judgment & decree of the Court below are sustainable in the eyes of law, much less, suffers from perversity as there has been apparent misreading of the oral and documentary evidence particularly document Ex.DC?
- II) Whether the judgment & decree of the Courts below laying the entire focus upon the compromise Ex.DW8/A is sustainable in the eyes of law?
- III) Whether the suit of the respondent/plaintiffs by taking the plea of adverse possession in the previous suit alleging themselves as tenants was maintainable or not”
- IV) Whether the sale deed dated 3.9.2002 executed by

Avtar Singh in favour of the appellant was hit by the doctrine of *lis pendens* or not?

- V) Whether the dismissal of the counter claim by the Courts below seeking injunction restraining the respondent/plaintiffs is erroneous and suffers from illegality and perversity?
- VI) Whether the lease deed bearing No. 77 dated 2.3.2000 is a void document for want of certainty, much less particulars of the khasra numbers?
- (VII) The sale deed dated 3.9.2002 specifically provides that the possession, of the property sold, has been handed over to the appellant/defendants.
- (VIII) Once the respondent/plaintiffs have denied their relationship of lessee by taking up the plea of adverse possession in the suit, filed by Avtar Singh, they cannot volteface and take up the plea that they had become lessee of Avtar Singh, much less of the appellant/defendants who stepped into the shoes of Avtar Singh. In essence there is forfeiture of lease agreement. In support of this contention, he has relied upon the judgment of the Hon'ble Supreme Court rendered in ***Palani Ammal v. Viswanatha Chettiar (Dead) and Others (1998)3 Supreme Court Cases 654.***

Mr. Gorakh Nath, learned counsel appearing on behalf of

the respondent/plaintiffs submits that:

- (i) Both the Courts below have given concurrent findings in decreeing the suit and no substantial questions of law would rise, much less invoking provisions of Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC").
- (ii) The appellant/defendants have failed to prove on record the compromise dated 13.10.2001 Ex.DW.8/A as the same has not been proved in accordance with law. In support of his contention he has drawn the attention of this Court to paragraph No.21 of the trial Court judgment that execution of the compromise dated 13.10.2001 if it was genuine, vendor Avtar Singh would have delivered the actual physical possession of the disputed property to the vendees i.e. defendants No.1 to 3, sale deed, which, was executed on 3.9.2002 after, about one year of compromise, therefore, it has irresistibly been concluded that on the date of sale deed dated 3.9.2002, Avtar Singh was not in possession of the suit land as per the stipulation made in the compromise.
- (iii) He further submits that the defendants succeeded in proving that they are lessees of the suit land vide registered lease deed No. 77 dated 2.3.2000.

- (iv) Viz-a-viz the mesne profits, the lower Appellate Court declined the plea on the ground that no inquiry, as envisaged under Order 20 Rule 12 CPC, had been initiated. Therefore, the second appeal has been filed.
- (v) In fact the plaintiff had claimed a sum of ₹ 15,000/- per annum per acre since 2001 till actual restoration of the possession over the suit land which was not denied by the appellant. Therefore, there was no need of holding any inquiry for determination of mesne profits.
- (vi) He further submits that the lower Appellate Court, being the last Court of fact, has examined all the documents and as per that, there is no illegality and perversity in the judgment rendered by the trial Court and the lease deed has been upheld as Avtar Singh had withdrawn the suit on 12.1.2006.

I have heard learned counsel for the parties and perused the paper book and am of the view that the appeal is liable to be allowed for the following reasons.

The respondent/plaintiffs have fortified their right of tenancy by taking up the plea of adverse possession, which is evident from the contents of the written statement extracted supra. Both the Courts below have failed to deliberate on or refer to the order dated

8.7.2002 (Ex.DC) passed by the Assistant Collector Grade II, which unequivocally, held that Avtar Singh was owner in possession of the sale deed effected on 3.9.2002, thus, the alleged dispossession in September 2001 was a story, coined by respondent No.2. Even in the suit filed by Avtar Singh, which was filed on 12.1.2001 and withdrawn on 12.1.2006, no such plea or application was moved that there has been forcible dispossession of Avtar Singh. In essence, in the previous proceedings, the defendants had denied the compromise.

In my view, the respondents/-plaintiffs have coined the story of the alleged dispossession in September 2001 and filed the suit on 2.3.2006 particularly when they realized that they lost before the Revenue Court and the appeal filed against the order dated 8.7.2002 has been dismissed as withdrawn. Rather this aforementioned finding of mine is fortified on going through the contents of the replication whereby, it has been specifically stated that it is Avtar Singh who was dispossessed in September 2001. The respondent/plaintiffs have tried to take the benefit of, withdrawal of the suit, by coining the story that once Avtar Singh had sold the property to the present appellants i.e. Hardev Singh and Others-defendants in the second suit, therefore, they have also become lessee of the present appellants/defendants. In order to support execution of the lease deed, the respondent/plaintiffs have failed to prove that they have been adhering to the terms & conditions of the lease deed by paying a sum of ₹ 24,000/- per annum to Avtar Singh and once the property has been exchanged there was no proof

that at any point of time, the appellants had attorned the respondent/plaintiffs, as tenants, therefore, they cannot take the aid of the provisions of Section 116 of the Transfer of Property Act, 1882.

This Court can also not remain oblivious of the contents of the lease deed allegedly set up by the respondent/plaintiffs, inasmuch as that, it gives the description of the entire holding and the share at the hands of the co-sharer, but does not, describe a particular piece of land which had fallen to the share of Avtar Singh. It is settled law that in the absence of any description of the property, the suit for possession is not maintainable. The respondent/plaintiffs have also not cared to seek the amendment of the plaint, much less not challenged the registered sale deed dated 3.9.2002 vide which the appellants had acquired the ownership for a valuable consideration. It is unfortunate that Avtar Singh had withdrawn the suit, which was filed for challenging the execution of the lease deed as the appellants/defendants had sought the indulgence of the lower Appellate Court by moving an application for additional evidence to place on record certain documents to show that Avtar Singh on the date, when the lease deed was executed, was not in India. However, the lower Appellate Court had declined the said application.

Be that as it may, a specific plea in paragraph No. 5(ii) of the plaint has been taken that the alleged power of attorney vide vasika No. 474 dated 26.12.1969 was got executed by Darshan Singh and others through impersonation and thus, is based on fraud and wrong facts. The respondents/plaintiffs, in the written statement,

do not specifically deny the aforesaid averment. For the sake of brevity, paragraph No.5(ii) of the plaint and of the written statement are reproduced here below:-

"5(ii) That the alleged General Power of Attorney wasika No. 474 dated 26.12.1969 was got executed by producing some other person in place of the plaintiff i.e. by impersonation and thus is based on fraud and wrong facts.

XXXX XXXX XXXX XXXX XXXX

5(ii) That the para No.5 (ii) of the plaint is wrong and hence denied. The G.P.A. is valid and legal document executed by the plaintiff himself and got registered in the presence of the witnesses and handed over the General Power of Attorney to the defendant No.1."

The proposition of law on the applicability of Order 8 Rule 5 CPC is no longer *res integra*. It is settled law that where a person does not specifically deny the averments made in the corresponding paragraph, the same are deemed to be admitted and the party asserting the plea does not require to prove the same in evidence. The plea of impersonation has not been specifically denied.

Keeping in view the aforementioned facts and circumstances, I am of the view that the judgment & decree of the Courts below suffer from illegality and perversity. Accordingly, the same are set aside. Accordingly, the above said substantial questions of law

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are answered in favour of the appellants/defendants and against the respondents/plaintiffs.

Mr. Neeraj Jain, Senior Advocate has brought to the notice of this Court that during the pendency of the appeal, an application viz. **CM-7571-C-2014** was filed seeking restraint order against the respondents that they should not take possession except in accordance with law. However, in the reply filed to the said application, it has been stated that the respondents/plaintiffs are already in possession. Whereas Mr. Jain has stated that his clients are in possession. Be that as it may, in case the respondents/plaintiffs have been found to have taken the possession of the property, the appellant/defendants shall be entitled to seek restitution of the property by invoking the provisions of Section 144 CPC.

Accordingly, Regular Second Appeal No. 1278 of 2013 is allowed and Regular Second Appeal No. 3299 of 2013 stands dismissed.

(Amit Rawal)
Judge

December 15, 2015
"DK"