

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No.1645 of 2015 (O&M)
Date of Decision: 12.05.2015

Vijay Kumar and others

..... APPELLANTS

VERSUS

M/s Millenium Buildmart Pvt. Ltd. and another

..... RESPONDENTS

PRESENT: - Mr. Munish Bhardwaj, Advocate
for the appellants.

Mr. Sumeet Mahajan, Senior Advocate
with Mr. Anurag Jain, Advocate
for the respondents-caveator.

CORAM: **HON'BLE MR. JUSTICE SHEKHER DHAWAN**

- 1) Whether Reporters of the 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?

SHEKHER DHAWAN, J.

The present appeal against judgment and
decree dated 27.03.2015 passed by the Additional District

Judge, Panipat whereby the appeal against judgment and decree dated 31.10.2014 passed by Additional Civil Judge (Sr. Divn.), Panipat was accepted.

For convenience sake, hereinafter, reference to the parties is being made as per their status in the Civil Suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiff-respondents had filed suit for permanent injunction for restraining the defendants from interfering in possession of the suit property i.e. 202/1400 share comprised in khewat No.429/417, khatoni No.478, khasra No.4339/2 and 54/1300 share in khasra No.4340/2, total area 640 square yards. The defendants have formed an unlawful group against the plaintiff for grabbing the suit property, which was purchased by the plaintiff from Tilak Raj vide registered sale deed dated 10.06.2011. Mutatoin was also sanctioned in the revenue record and the plaintiff is in actual physical possession of the suit property and using the same.

The defendants contested the suit taking the plea that the suit is not maintainable. More so, earling

proceedings under Section 145 Cr.P.C. were completed by the Executive Magistrate, Panipat. Later on, the suit was dismissed. In fact, the property was purchased by Shanti Devi, who was mother of the defendants vide sale deed No.2590 dated 08.07.1982 from Gurmej Singh and others. Shanti Devi died in October, 2002 and thereafter, property was inherited by defendants No.1 to 3 in equal share. Roshan Lal tried to dis-possess the defendants and an application was filed before S.P. Panipat and proceedings were initiated under Section 145 Cr.P.C. and at that time said Roshan Lal had made a statement before the Court of City Magistrate, Panipat that he had sold the property to Tilak Raj. Later on, the defendants came to know that Om Parkash executed the sale deed No.3680 dated 19.07.2010 in favour of Tilak Raj and Tilak Raj further executed the sale deed No.2260 dated 10.06.2011 in favour of the plaintiff. They had played a fraud with the defendants to grab the property. The suit property was lying vacant under the possession of the defendants where they had already raised boundary wall about 6-7 years ago. The demarcation was done by the Executive Magistrate with the police help.

In view of report of the police and the proceedings under Section 145 Cr.P.C., the property is owned by Shanti

Devi. The police proceedings were earlier initiated. The suit of the plaintiff is without any force and be dismissed.

On these facts, the Court of first instance settled the following issues:

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

After recording of evidence and appreciation thereof, the Court of first instance returned the findings that the plaintiff failed to prove its possession on the suit property and the suit was dismissed.

The plaintiff preferred an appeal before the First Appellate Court and the First Appellate Court reversed the findings and accepted the appeal.

Being aggrieved of said findings by the First Appellate Court and passing of judgment and decree dated 27.03.2015, the defendants are in second appeal.

At the time of arguments, Mr. Munish Bhardwaj, learned counsel for the appellants mainly took the plea that they are the owners of the suit property but the

respondents want to take the possession forcibly. They have played fraud by getting the sale deed executed through Tilak Raj and the Tilak Raj was not the owner of the property. The proceedings under Section 145 Cr.P.C. were initiated and the report of the inquiry on such proceedings are Ex.D-2 on the file. The Court of First Appeal completely ignored the said report and returned the findings, which are liable to be reversed.

Mr. Sumeet Mahajan, learned Senior counsel for the respondents took the plea that the plaintiff-respondents had purchased khasra Nos.4339/2 and 4340/2 vide registered sale deed. The sale deed was duly executed by Tilak Raj, who was the owner. Mutation had already been sanctioned in favour of the plaintiff. The proceedings under Section 145 Cr.P.C. are having no value in the eyes of law before the Civil Court. Otherwise, the land belonging to the defendants bearing khasra No.4352/2 is at a distance. The findings recorded by the Court of first appeal are based on facts of the case and the evidence available on file and correct appreciation of law and, as such, appeal be dismissed.

Having considered the rival contentions, this Court is of the considered view that the Court of first appeal has

rightly returned the findings that the plaintiff had purchased the land comprising of khasra No.4339/2 and 4340/2 from Tilak Raj. The revenue record i.e. jamabandi exists in favour of the owner in respect of the said khasra numbers. There is nothing on the file to suggest that the said land bearing khasra Nos.4339/2 and 4340/2 were actually owned by anybody else except Tilak Raj at the time of execution of the sale deed in favour of the plaintiff.

The Court of first appeal had rightly observed that the order passed on proceedings under Section 145 Cr.P.C. is not binding on the Civil Court. More so, there was no evidence available on file that any opportunity of hearing was given to the plaintiff by Executive Magistrate before passing the order Ex.D-2. As regards to the decision of Civil Appeal No.164 of 2011, titled as **Vijay Kumari and others Vs. State of Haryana**, decided on 12.04.2012 and copy of judgment and decree Ex.D-3 on the file, the plaintiff was not a party to the said litigation. The case of the plaintiff is specific that 616 square yards was purchased vide registered sale deed from the recorded owner. Mutation has already been sanctioned in favour of the plaintiff. The findings returned by the First Appellate Court are based on facts of the case available on file whereas the findings

recorded by the Court of first instance are against facts and evidence available on file and against the correct propositing of law.

As such, the findings recorded by the Court of first appeal in this case are maintained. Resultantly, the present appeal is without any merit and the same stands dismissed.

**(SHEKHER DHAWAN)
JUDGE**

May 12, 2015

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