

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 3848 of 2015 (O&M)

Date of decision : August 21, 2015

Jaswant Singh through L.Rs and another

... Appellants

vs.

Veena Chadha and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Chetan Bansal, Advocate
for the appellants.

Mr. P.L. Singla, Advocate
for respondents-Caveators.

Surinder Gupta, J

This regular second appeal has been filed by Jaswant Singh (since deceased) through his legal representatives and Kashmir Kaur defendant No.1 against the concurrent judgments of the courts below whereby suit of plaintiff-respondent No.1 Veena Chadha was decreed and the appellants-defendants were restrained from interfering in the possession of plaintiff-respondent No.1 over the plot bearing No.34 -35 (New) situated in the area of Rak Shikarga, Tehsil & District Amritsar and were also restrained from making any kind of construction over the plot in question.

Plaintiff-respondent No.1 Veena Chadha purchased the disputed plot as fully described in the head note of the plaint from Mangal Singh son of Sunder Singh vide sale deed dated 10.11.1980. As per recital in the sale deed, Mangal Singh gave possession of the plot to plaintiff-respondent No.1. The boundaries of the plot sold to plaintiff-respondent No.1 as mentioned in the sale deed dated 10.11.1980 are as follows :-

<i>East</i>	:	<i>Plot No. 33</i>
<i>West</i>	:	<i>Remaining portion of plot No.35.</i>
<i>North</i>	:	<i>Street 20 ft. wide</i>
<i>South</i>	:	<i>Vacant plot.</i>

The plaintiff filed suit for injunction on 25.5.2001, *inter alia*, pleading that appellants and one Vinod Kumar defendant who had no

concern with the suit property started threatening to interfere in her peaceful possession and have collected the building material at the site to raise construction.

The appellants contested the claim of plaintiff-respondent No.1 with the plea that vide sale deed dated 30.6.1997, Kashmir Kaur appellant had purchased the suit property from Lakhwant Singh son of Swaran Singh.

While decreeing the suit, Civil Judge (Jr. Division), Amritsar observed that the power of attorney executed by Lakhwant Singh in favour of Kuldeep Singh and even by said Kuldeep Singh in favour of Jaswant Singh appellant were with respect to property having boundaries totally different from that of suit property. Appellant Jaswant Singh, who is husband of Kashmir Kaur, while appearing as DW-4 has stated that he had delivered possession of plot measuring 300 sq. yards to Kashmir Kaur at the time of execution of sale deed dated 30.6.1997 in her favour. In cross-examination he has explained that there are two plots with them in that area numbers of which are 31 and 32. The adjoining plot No.30 is owned by Singh Sahib. Kashmir Kaur, however, evaded to appear as witness in this case.

The appellant filed appeal before Additional District Judge, Amritsar which was dismissed.

Learned counsel for appellant has argued that suit filed by respondent No.1 was not maintainable as she had the other efficacious relief available to her to seek relief of declaration of her title because in this suit the dispute is qua the title and not possession. He has relied upon the observations in the case of **Anathula Sudhakar vs. P. Buchi Reddy (Dead) By L.Rs. And others**, (2008) 4 SCC 594. In the aforesaid case, the Apex Court has observed in para no.11 as follows :-

“11. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

(11.1) Where a plaintiff is in lawful or peaceful possession of a property and such possession is

interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

(11.2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

(11.3) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

Learned counsel for appellant has stressed on the observations of Apex Court in para No.11.3 to argue that dispute in this case was of title of plaintiff-respondent No.1 which was under cloud as the appellant also claimed title of the same plot which he had purchased.

On giving a careful thought to the submissions of learned counsel for appellant, I find no substance therein so as to agree with him. Learned counsel for appellant has not disputed during the course of arguments that Mangal Singh was the owner of plot No.34 and 35 (New) which was sold to Veena Chadha respondent No.1. Appellant Kashmir Kaur had purchased the plot from Lakhwant Singh another co-owner. The sale deed of Kashmir Kaur also pertains to the plot no.34 and 35. Even if this be believed that both i.e. respondent No.1 Veena Chadha and appellant

Kashmir Kaur had purchased the same plot, in that eventuality it is the prior sale transaction which will prevail. The sale deed in favour of Veena Chadha is of 1980 and as such displace the subsequent sale deed dated 30.6.1997.

Another factor which strongly go against the case of appellant is that boundaries of plot purchased by Kashmir Kaur as mentioned in sale deed differ from the plot purchased by Veena Chadha. As per sale deed Ex.P1, the plot purchased by Kashmir Kaur had the boundaries as follows:-

East : Plot No.14 and 15

West : Road 20 ft. wide

North : Plot No. 33

South : Plot No. 36

As already discussed, the boundaries of the plot purchased by Veena Chadha are as follows :-

East : Plot No. 33

West : Remaining portion of plot No.35.

North : Street 20 ft. wide

South : Vacant plot.

This shows that on the northern side of plot of Veena Chadha there is a street while street is on the western side of the plot of Kashmir Kaur. On eastern side of the plot of Kashmir Kaur is the plot No.14 and 5 while on the eastern side of the plot of Veena Chadha there is a plot No.33.

In these circumstances no fault can be found with the observations of the courts below that sale deed of appellant Kashmir Kaur is with regard to some other plot and not with regard to the plot of Veena Chadha. The observations in para 11.3 the case of ***Anathula Sudhakar (supra)*** are in no manner applicable to the facts of the present case. In this case there is no dispute or cloud over the title of respondent No.1. It is the title of Kashmir Kaur which is under cloud and not of Veena Chadha. As such, suit filed by Veena Chadha was maintainable.

Learned counsel for appellant has argued that plaintiff-respndent No.1 did not produce any site plan of her plot so as to identify the same. The above submission of learned counsel for appellant has no substance. The appellant has given the location, boundaries and description

of the plot owned by plaintiff-respondent No.1 and there is no confusion about the same. As the title of plaintiff-respondent No.1 is not disputed, she was not required to file suit seeking declaration of her title. The plot in dispute is a vacant plot and it is well established principle of law that in the matter of vacant plot, the possession follows the title and title of disputed plot vests in plaintiff-respondent No.1.

On perusal of paper book and judgments of courts below, I find no factual or legal infirmity therein calling for any interference. No substantial question of law requiring determination arises. This appeal has no merits and is dismissed.

(Surinder Gupta)
Judge

August 21, 2015
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