

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

RSA No. 4004 of 2015(O&M)

Date of decision: 01.09.2015

Saudagar Singh

... Petitioner

versus

Rupinderjit Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ashok Giri, Advocate for the appellant.

K.Kannan, J.

The plaintiff who believes that by securing a registered document of sale, he could become the owner without proving title of the vendor lost his case at the Appellate Court. The counsel persists with the same argument that since he stated that he was the owner he should be treated as the owner. It is a case where the plaintiff was seeking for ejectment of the property from the hands of the defendant who set up a plea of adverse possession. The law contemplates protection to a person in possession under Section 110 of the Evidence Act, that possession is 9 points in law and the person who seeks recovery of possession must show better title. A registered sale deed can do no more than making possible an inference that there was a transaction of sale in respect of property. He cannot prove that the vendor had any title to the property. The suit for

recovery of possession without proving the title of the vendor could not have succeeded at all.

There was yet another ground which was procedural in character that was adverted by the Appellate Court. It was a finding that the plaintiff had only filed a photocopy of the sale deed and neither the original nor the certified copy had been filed in Court. The argument was that the photocopy was allowed to be received without any objection and the copy was also attested by a person competent to make such attestation. It has been held through several decisions in Atma Nand (deceased) through his LR Vs. Ram Sarup (deceased) through his LR 2012 (1) PLR 440 that a mere reception of document does not dispense with the proof of the same nor does it makes the document admissible in evidence. It is only under the provisions of the Stamp Act that if an objection regarding any inadmissibility of the document is taken on the ground that the document is not duly stamped under Section 35, there is a bar indicated under Section 36 of the Stamp Act that can prevent a person from taking an objection regarding the admissibility. However, as regards a registered instrument before a secondary evidence is brought, the person who wants to tender secondary evidence must set out the justification specified under Section 65 of the Evidence Act. If anyone of the grounds are made then the sale deed which is a public document could be proved by production of a certified copy which is proof of what the original contained.

This is possible by virtue of section 76 of the Indian Evidence Act which states that certified copy of a public document issued by a

person having the custody of the documents to issue such a copy, if it also accompanied with the certificate that it is the true copy shall be so received and Section 77 of the Indian Evidence Act makes it clear that such certified copies shall be received as proof of the contents of the original public document. What is possible as proof of document of what the original contains under Section 77 cannot be applied to a photocopy of a document not so duly certified but attested by some officer not connected with the registration or who has no custody of such a document.

The counsel also has an argument that since the defendant was setting up adverse claim it must be assumed that the plaintiff's title to the property was being admitted. It is a repeated mistake that we find expressed in several judgments of the subordinate Courts. A person who holds the property in assertion of his own right and holds the property adversely need not even know who the owner of the property is. The adverse character requires an animus which under the Roman Law was brought out through the expressions, *nec vi, nec lam, nec precario*. It is one of animus of the person who holds the property and has nothing to do with the person who claims that is the owner. The person who sues for ejectment or recovery of possession must have a situation where the defendant's possession can not become adverse, which is another way of establishing that the defendant was under his permission or the defendant's possession can be sourced to a character of possession which is not adverse. In this case, if the defendant was saying that he had perfected title of the property by the adverse possession and the plaintiff

would seek to recover the possession, he must prove his title to the property before he can succeed. The title cannot be taken as proved by filing some sale deed or a copy as though registration of a document is a warranty for title. The Registrar has no business to enter upon title unlike Court's in Continental jurisdiction where the registration by offices constituted such a presumption. The French Code Civil which is applied in Goa and in Pondicherry allowed for the presumptions but for the whole rest of India, that includes Punjab, there is no such presumption. The person that files a suit on the basis of the sale deed must always prove his title to the property before he could secure a relief of recovery of possession.

I have examined the law at length not because the case involved serious questions of law for consideration but the law that is established already completely answer of questions of what this case raises and there is no need for formulation of proposition of law for examination. If such propositions exist they exist for the appeal to be dismissed.

The regular second appeal is dismissed.

(K.KANNAN)
JUDGE

01.09.2015

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