

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

C.M. No.13565-C of 2015 in / and
Regular Second Appeal No.5602 of 2015(O&M)
Date of decision: 21.10.2015

Manju and others

.....Appellants

versus

Smt.Shakuntla and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Salil Sagar, Senior Advocate with
Mr.Sankalp Sagar and Mr. Samarth Sagar, Advocates
for the appellants

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J.

Impugned in the present regular second appeal is the judgment and decree 11.9.2014, passed by the learned Additional District Judge, Rewari, affirming the judgment and decree dated 30.4.2012, passed by the learned Additional Civil Judge, Senior Division, Kosli, vide which, suit of the plaintiffs was decreed and the defendants were directed to hand over the peaceful possession of the suit property, mentioned in para no.1 of the plaint, as per boundaries mentioned in the site plan Ex.P1. However, for the purpose of measurement, as per dimensions shown in Ex.P6, within a period of three months from the date of passing of the judgment.

Facts of the case are that the plaintiffs claim that they are owners of one residential house and the shops situated in the revenue estate of village Bhakli Tehsil Kosli, District Rewari, boundaries of which have been mentioned in the plaint 'Mark ABCD'. The plaintiffs had purchased the open site underneath the house and shops from one Ram Chander son of Sardara in the year 1976 vide three sale deeds and took the actual physical possession of the same at the time of purchase. Thereafter, they constructed the house and shops over the said site and started residing therein. The defendants started interfering in the possession of the plaintiffs. Therefore, the plaintiffs had earlier filed a civil suit for permanent injunction against the defendants in May 1987. The same was decreed by the learned Civil Judge, Senior Division, Rewari on 21.2.1998 and the defendants were permanently restrained from interfering in the possession of the plaintiffs over the disputed property. Appeal against the said judgment and decree was dismissed by the learned Additional District Judge, Rewari on 9.5.2001. It is stated that since the defendants started interfering in the possession of the plaintiffs, the plaintiffs filed execution petition under Order 21 Rule 32 CPC. However, in spite of the decree, they occupied the disputed property forcibly. The defendants cannot retain their illegal possession.

Before the lower Court, only defendant Nos.9, 13 and 14 contested the suit. Defence of defendants Nos.3 and 4 was struck off and remaining defendants were proceeded against ex-parte, including defendant No.1, who had earlier filed the written statement. It was

stated that Smt.Kaushlya is owner in possession of the property. She inherited the same from her father Ram Chander and since then she is residing there after constructing a residential house.

The lower Court referred to the pleadings of the parties, where in the written statement, the sale deed of the suit property in the year 1976 and handing over of the possession of the suit property by Ram Chander to plaintiffs was not specifically denied. There was evasive denial regarding the previous judgment and decree dated 21.2.1998 and the judgment and decree of the appellate Court dated 9.5.2001. It was further noticed that PW2 was not cross-examined regarding the facts mentioned in his affidavit tendered in examination-in-chief. Therefore, the said facts are deemed to be admitted. The lower Court accordingly decreed the suit. Findings were affirmed in appeal.

I have heard learned counsel for the appellants and have also carefully gone through the file.

Learned counsel for the appellants has argued that in fact Ram Chander is alleged to have executed three sale deeds in the year 1976. One of the sale deeds was un-registered. It is stated that under Section 53-A of the Transfer of Property Act, 1882, only the possession could be protected and the plaintiffs cannot seek the declaration in this respect that they are the owners of the disputed property and entitled to recover the possession. In this regard, reliance has been placed on authorities of the Hon'ble Supreme Court in Patel Natwarlal Rupji v. Kondh Group Kheti Vishayak and another

(1996) 7 Supreme Court Cases 690, Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra (Dead) through Lrs., (2004) 8 Supreme Court Cases 614 and Suraj Lamp and Industries Private Limited (2) through Director v. State of Haryana and another, (2012) 1 Supreme Court Cases 656.

I am of the view that in the present case, there was previous litigation between the parties. Copies of the judgments and decrees of the same have been produced during arguments, which show that in the previous suit between the parties, there was a specific issue as to 'whether the plaintiffs are the owners and in possession of the suit property as alleged'. In the previous suit decided on 21.2.1998, the learned Civil Judge, Senior Division, returned the findings that the defendants cannot take advantage on account of non-registration of the sale deed (Ex.P3) and that the plaintiffs had performed their part of the contract and in pursuance thereof had taken the possession of the sold property. The only plea was that the said sale deed required compulsory registration and has not been registered. Therefore, it is established that it was held that the plaintiffs are in lawful possession of the suit property on the basis of said sale deed, which was though un-registered. If it is so, if the plaintiffs have been dis-possessed by the defendants, the plaintiffs are entitled to recover back the possession. The defendants have never sought the declaration from any Civil Court that they are the owners of the suit land and that since the said sale deed does not confer any title, therefore, they are entitled to recover back the

possession. The decree for permanent injunction was already passed against the defendants. Still they dis-possessed the plaintiffs. Therefore, the plaintiffs can recover back the possession. Therefore, the findings in the previous suit will operate as resjudicata against the present appellants. Even if the un-registered sale deed does not confer the title but on the basis of previous lawful possession, the possession could be recovered back by plaintiffs. Moreover, the controversy has already been settled in the previous suit and cannot be re-opened in the subsequent suit.

Findings of facts have been recorded. No substantial question of law arises. Otherwise also on merits, there is no illegality or infirmity in the findings recorded by both the Courts below.

Hence, the application for condoning the 315 days in filing the present appeal as well as the present appeal stand dismissed.

21.10.2015
gk

(Kuldip Singh)
Judge