

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

129

Regular Second Appeal No.731 of 2015

Date of Decision: November 28, 2015

Ghanshyam and another

...Appellants

Versus

Nanak Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Adish Gupta, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Faridabad, dated 24.12.2012, by which the suit filed by respondent No.1-plaintiff for permanent injunction restraining the defendants from interfering, dispossessing, alienating and creating any third party charge over the suit property detailed therein to the extent of 121 square yards, situated within *laldora, abadi deh* in village Unchagaon, Tehsil Ballabgarh, District Faridabad, has been partly decreed to the extent of 71 square yards of land because of the lease deed in his favour and the appeal preferred by the appellants-defendant Nos.1 and 2 against the said judgment and decree, stands dismissed by the Additional District Judge, Faridabad, on 30.10.2014.

2. It is the contention of learned counsel for the appellants that the findings recorded by the Courts below cannot sustain as the appellants became the owner of the property on 29.03.1990 on the date on which the wife of the vendor Shiv Dev Singh namely Smt. Savitri Devi leased 121 square yards of the land in favour of respondent No.1-Nanak Chand. He contends that the appellant, who is the owner of the property, has a better

title over the respondent/lessee-Nanak Chand and, therefore, the judgment and decree passed by the Courts below cannot sustain. His further contention is that the respondent No.1-plaintiff has failed to establish his possession over the property in dispute by referring to the sale deed dated 08.07.1996 Exhibit D-1 by which 50 square yards of land out of the suit property, has been sold to Shanta Devi, where respondent No.1-plaintiff Nanak Chand is a witness, where possession has also been handed of the said land. Since the possession has been handed over of the said 50 square yards, which land was sold to Shanta Devi by registered sale deed dated 08.07.1996 Exhibit D-1, the possession over the remaining land of respondent No.1-plaintiff Nanak Chand, also is doubtful, rather the possession was with the appellants-defendants. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

3. This contention of learned counsel for the appellants cannot be accepted in the light of the detailed consideration of the documents on record, as has been given in paras 20 to 22 of the judgment of Lower Appellate Court dated 30.10.2014, which reads as follows:-

“20. It is case of plaintiff that he is in possession of property in dispute being lessee. Lease-deed Ex.P3 was executed in his favour by Smt. Savitri. Defendant no.1 had purchased it from her husband who was its owner. Sale-deed in favour of defendant is on file as Ex.D2. This sale-deed says that defendant was handed over symbolic possession. It does not say that actual and physical possession was handed over to him. Interestingly this sale-deed was executed on 29.3.1990. Same day his wife who was lessee in possession over this property, transferred lease rights in favour of plaintiff. She also handed over actual and physical possession as provided in this lease-deed Ex.P1. So, defendant's claim that he is in possession is not correct.

21. According to defendant no.1, he had sold 50 Sq. yards of land to Smt. Santa Devi vide registered sale-deed Ex.D1. According to him, plaintiff had signed it as a witness. He says it amounts to admission of his possession. But in reality it is other way around. It says that possession of the property in dispute was/is with plaintiff. In beginning of this sale-deed, it is provided that possession of the plot is with lessee Nanak Chand. It means he has not only admitted his possession but also sold 50 Sq. yards with his consent so that possession could be delivered to vendee. In such situation, defendant cannot claim that he is in possession. It is clearly proved that plaintiff is in possession. He is, therefore, entitled to protect his lease rights.

22. It is claimed that appellants-defendants may be allowed to lead additional evidence so that they can prove lease-deed executed in favour of Smt. Savitri. But that is irrelevant document. Lease in favour of Smt. Savitri is not disputed. This suit has not been brought by defendant challenging it. Moreover, Smt. Savitri was lease holder for 99 years. She was, therefore, competent to transfer lease rights. So, this application has no merit. Hence, rejected”.

In view of the above, the argument as raised by learned counsel for the appellants cannot be accepted.

4. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

5. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

November 28, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE