

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

R.S.A No. 993 of 2015 (O&M)

Date of decision:- 20.05.2015

Bhagat Singh

...Appellant

Versus

Ranvir Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Arun Luthra, Advocate
for the appellants

Mr. Aman Bansal, Advocate
for the caveator/respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

C.M. No. 2977-78-C of 2015

For the reasons mentioned in the applications, delay of 19 days in filing and 268 days in re-filing the present appeal is condoned.

The application stands disposed of accordingly.

R.S.A No. 993 of 2015

This regular second appeal is directed against the judgment dated 10.01.2014 passed by learned Addl. District Judge, Faridabad, which was filed against the judgment and decree dated 24.09.2013 passed by learned Civil Judge (Jr. Divn.), Faridabad, whereby the suit filed by the plaintiff-respondent (herein after to be referred as 'the respondent') was decreed.

Brief facts of the case are that the respondent filed a suit seeking a decree for mandatory injunction to direct the defendant-

appellant (herein after to be referred as 'the appellant') to hand over possession of H.No. 917, Housing Board Colony, Sector 10, Faridabad to him and further to restrain the appellant from raising any construction of the said house. The respondent is real brother of the appellant and had contended that their father Ram Singh had purchased three house bearing No. 915, 917 and 918, Housing Board Colony, Sector 10, Faridabad. In a family settlement between the parties, H. No. 915 had been given to Dinesh, the third brother of the parties and house No. 918 was given to the appellant. The dispute house No. 917 was given to the respondent. Registered conveyance deed dated 22.11.1995 had been executed by the Housing Board, Haryana in favour of Ram Singh. Thereafter, Ram Singh transferred the house in question vide a decree passed in the Lok Adalat in Civil Suit No. 665 of 2004 in favour of the respondent. The house was kept locked as the respondent and his family were residing in Village Nagina (Mewat) and when the respondent visited the property in January, 2008, he found that the appellant had locked the said house after breaking the lock of the house of the respondent. He had also opened a door shown at point X in the site plan attached with the plaint by breaking the wall and had occupied the house without the consent of the respondent. When the appellant was not vacating the house, the respondent gave a legal notice dated 01.12.2008 to hand

over vacant possession within fifteen days of the receipt of the notice.

The appellant, vide his reply dated 22.12.2008 denied the contents of the notice.

On notice, appellant filed written statement and admitted the relationship between the parties and also the fact that House No. 915 had been given away to Dinesh and House No. 918 had been given to the appellant. Both the aforesaid houses had been purchased from the Joint Hindu Family Property Funds but H. No. 917 had been purchased by their father out of the funds given by the appellant exclusively vide cheque No. 934395 dated 21.04.2000 amounting to Rs.40,080/-. The house was got allotted in the name of Ram Singh on his undertaking that he would transfer the same in the name of the appellant in due course of time. The possession of the house was given to the appellant and he raised construction on the first floor by investing Rs.10 lacs and also renovated the ground floor from his own income. The respondent had been residing permanently in village Nagina, Tehsil Ferozepur Jhirka. The respondent had no right, title or interest in the property. The appellant had been residing with his family in H. No. 917 and 918.

Both the Courts decreed the suit of the respondent on the grounds mentioned below:-

(i) The case of appellant was that he had given Rs.40,080/- vide

cheque No. 934395 dated 21.04.2000 to his father whereas as per the copy of the conveyance deed (Ex P8), the house was released in favour of Ram Singh on 25.11.1995. Thus, the transfer was made more than five year prior to the issuance of the said cheque.

(ii) Further, the plea taken by the appellant that the purchase of the disputed house in the name of Ram Singh was a benami transaction, was discarded as benami transactions are prohibited under Section 3 of the Benami Transactions (Prohibition) Act, 1988 except for properties purchased by any person in the name of his wife or unmarried daughter.

(iii) Ram Singh himself appeared as P.W.5 and stated that he had purchased the disputed house out of his own funds. It stands proved on record that this house was purchased by Ram Singh and it was he who had transferred the same to his son Ranbir Singh. No evidence was led by the appellant to show that award dated 07.05.2005 was liable to be set aside. Ram Singh was the absolute owner of the property in question and had thus the right to transfer the house to any member.

(iv) The issuance of legal notice Ex P2 by the respondent was admitted by the appellant and he further admitted that he filed a reply to the said notice. The legal notice clearly shows that the appellant has been entrusted with care of H. No. 917 in the year 2005.

Since the appellant was owner of the adjoining house and also the real brother of the respondent, he was delivered vacant possession in May, 2005 on the understanding that he would return possession to the respondent as and when required by the latter. By way of Ex P2, the aforesaid licence of the appellant was cancelled.

(v) Further the objection of the appellant that in a suit for mandatory and permanent injunction, the possession could not be granted to the respondent by making reference to the judgment of ***Sohan Singh v. Piara Singh 2000(1) RCR (Rent) 641, E.P George vs. Thomas Jain, 1984 AIR Kerala 224 and Harish Chand v. Som Nath and others 2013 (1) RCR (Civil) 367***, has been dealt by the Lower Appellate Court by referring to Ex P2 where the appellant had a licence to be in possession and the issuance of P-2 was not disputed by the appellant. Appellant has been entrusted with care of H. No. 917 in the year 2005. Since the appellant was owner of the adjoining house and also the real brother of the respondent, he was delivered vacant possession in May, 2005 on the understanding that he would return possession to the respondent as and when required by the latter. By way of Ex P2, the aforesaid licence of the appellant was cancelled. Further the respondent was not required to pay advoluerum Court fee as held by this Court in a Sohan Singh's case (supra).

(vi) As per award dated 07.05.2005, Ram singh had transferred three

houses independently in favour of his three sons and this award could not be set aside as the appellant was not able to lead any evidence that he had given Rs.40,080/- vide cheque No. 934395 dated 21.04.2000 to his father. Ram Singh was the absolute owner of the property in question and had thus the right to transfer the house to any member.

The judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, appeal is dismissed.

20.05.2015

G Arora

(***RITU BAHRI***)
JUDGE