

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

**RSA No.5240 of 2014 (O&M)
Decided on : 17.9.2015**

Bhagwant Dutt and another

...Appellants

Versus

Raj Kumar

...Respondent

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Ravi K. Mattoo, Advocate,
for the appellants.

K. C. PURI, J.

CM No. 12375-C of 2014

There is delay of 7 days in re-filing the appeal. For the reasons mentioned in the application, the delay in re-filing the appeal stands condoned. The application stands allowed.

CM No. 12376-C of 2014

There is delay of 37 days in filing the appeal. For the reasons mentioned in the application, the delay in filing the appeal stands condoned. The application stands allowed.

Main case

The defendants- appellants have directed this appeal against the judgment and decree dated 4.4.2014 passed by Sh. Ravi Kumar Sondhi, District Judge, Panchkula, vide which the appeal preferred by the defendants was dismissed and the judgment and decree

dated 12.1.2012 passed by Sh. Manpal, Civil Judge (Junior Division), Panchkula were upheld and the suit of the plaintiff remained decreed.

The plaintiff through his Special Power of Attorney Shiv Kumar, who is stated to be well conversant with the facts of this case, filed a suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff over the disputed property, which is part of land comprising in Khewat/Khatauni No. 50/68, Khasra No. 56//29/2/2 (52-2) to the extent of 7/1042 share, measuring 7 Marlas, having an area of 45'x45', which is bounded as North-House of Jagir Gujjar and plot side 45 ft.; South-Kutcha Band rasta 15 wide and 45 rasta; East-Plot side 45 ft. Mustaq Khan and West-Plot side 45 ft. and other owner, situated at village Raipur Rani, Tehsil and District Panchkula (hereinafter called as the suit property) by raising any construction thereupon or by dispossessing the plaintiff therefrom or from alienating the suit property, in any manner whatsoever.

As per the case of the plaintiff, he had purchased the suit property from its previous owner Shri Tarlochan Gir son of Nauranga Gir, resident of village Nalas Kalan vide registered sale deed dated 21.4.2004 for a valuable sale consideration. The actual and physical possession of the suit property was also delivered to the plaintiff in the presence of witnesses. Mutation No. 4687 dated 19.6.2004 was also sanctioned in favour of the plaintiff. Since then the plaintiff is owner in possession over the suit property. The vendor of plaintiff had

purchased the suit property from its previous owner Shri Papinder Singh etc., vide registered sale deed No. 688/1 dated 18.11.1991 and said Papinder Singh etc, were also in possession of the suit property at that time. The plaintiff had purchased the suit property for residential purpose and he wants to construct his house over the suit property. The defendants are strangers to the suit property, but they are threatening to interfere in the peaceful possession of the plaintiff and to dispossess the plaintiff therefrom. In the third week of June, 2004, the plaintiff started raising construction over the suit property and collected the building material near the suit property, but the defendants came to the suit property and started creating obstruction in the construction work of the plaintiff. The plaintiff requested the defendants not to do so, but they refused. Hence, this suit.

On notice the defendants appeared and filed written statement, taking preliminary objections of maintainability; locus standi etc. On merits, the facts of the plaint were denied. It was pleaded that the plaintiff is neither owner nor in possession of the suit property. The vendor of the plaintiff Shri Tarlochan Gir was also neither owner nor in possession of the suit property. The alleged sale deed dated 21.4.2004 in favour of the plaintiff is a waste paper and this sale deed has been forged just to grab the property owned by the defendants. On the contrary, as per the defendants, appellant-defendant No.2 along her relatives Shri Babu Ram and others had purchased a chunk of land

measuring 6 Kanals and 5 Marlas out of the land comprised in Khasra

No. 56//26/1(0-9), 29/2/2 (52-2) total measuring 52 Kanals 11 Marlas vide registered sale deed dated 11.5.1992 and the possession of that land was also delivered to the vendees including the defendants at the spot. The mutation on the basis of above sale deed was also sanctioned. Other owners of this land measuring 6 Kanals 5 Marlas have also sold their respective shares to different persons and the suit property owned by the defendants has been left at the spot, which is surrounded by other plots also. As such, they are owners in possession of the suit property as per the sale deed dated 11.5.1992 and prior to that their vendors, Jagdish Singh etc, were owners in possession of the same. The defendants have already raised construction over the same. The sale deed in favour of the plaintiff is a forged and fabricated document and the same does not confer any right to the plaintiff over the suit property. Said Tarlochan Gir also never handed over the possession of the suit property to the plaintiff as he was never in possession over specific piece of the suit property. The alleged mutation dated 19.6.2004 in favour of the plaintiff is also illegal. The vendor of plaintiff had no right to sell the suit property belonging to the defendants. Now the defendants are in possession of the site purchased by them. The foundation of this plot was also filled by the defendants about three years ago and the walls up to the height of 3'-4' were also constructed on the back side and western side and 10' was also constructed on the eastern side in the month of July, 2002. Further, safeda trees were also planted by the defendants in the suit property.

But on 15.06.2004 the defendants started construction and raised boundary wall to the extent of 3-4' on two sides and the plaintiff along with the local police got stopped the construction work of the defendants, when the defendant left for Patiala as the defendant is resident of Patiala. The plaintiff belongs to a party led by the Lambardar of that particular area where the suit property is situated. The plaintiff in connivance with said Lambardar and other persons forged the sale deed by showing the boundaries of the plot of the defendants. The complaint for registration of criminal case is lying pending with the police against the above said persons. On that complaint, the defendants were also allowed to raise construction by the S.P., Panchkula but again the construction work was got stopped by the plaintiff. The construction material of the defendants is lying at the spot. Now under the garb of present suit the plaintiff wants to grab the suit property. The remaining allegations were denied.

Replication was filed by the plaintiff reasserting the averments mentioned in the plaint and controverting the averments mentioned in the written statement.

From the pleadings of the parties, following issues were framed:-

- (1) Whether the plaintiff is owner in possession of the land marked ABCD in red colour in the site plan dated 21.6.2004 and described in the head note of the plaint?OPP

(2) Whether the plaintiff is entitled for decree for permanent injunction on the grounds mentioned in the plaint?OPP

(3) Whether the suit is not maintainable in the present form? OPD

(4) Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD

(5) Whether the plaintiff has concealed the true and material facts?OPD

(6) Whether the defendants are owners in possession of the suit property in para No.2 of the written statement?OPD

(7) Relief

Both the parties led their respective evidence on the aforesaid issues. The learned trial court, after appraisal of the evidence, vide judgment and decree dated 12.1.2012 decreed the suit of the plaintiff.

Feeling dissatisfied with the above said judgment and decree dated 12.1.2012, the defendants filed appeal before the lower appellate Court which was dismissed vide judgment and decree dated 4.4.2014 passed by Sh. Ravi Kumar Sondhi, District Judge, Panchkula.

Still feeling aggrieved, with the aforesaid judgments and decrees dated 12.1.2012 and 4.4.2014, the defendants-appellants

have preferred the instant regular second appeal.

Learned counsel for the appellants, in para no.10 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the instant appeal :-

- 1) Whether the respondent-plaintiff has been legally able to discharge his onus to prove the issue No.1 framed by Id. Civil Court, Panchkula ?
- 2) Whether plaintiff has proved the execution of sale deeds Ex. PM and PN dated 18.11.1991 and 21.4.2004 as required by law?
- 3) Whether the impugned judgments and decrees are contrary to facts, evidence and law?
- 4) Whether the impugned judgments and decree deserve to be set aside?

I have heard learned counsel for the appellants and have gone through the record of the case.

Learned counsel for the appellants has submitted that although, the plaintiff is in possession of the suit property but the defendants have right in the suit property. It is alleged that sale deed dated 21.4.2004 in favour of the plaintiff is a forged and fabricated document. The impugned judgments and decrees are contrary to the facts and law and the judgments of both the Courts below deserve to be set aside.

I have carefully considered the said submissions but do not find any force in that submission.

This is a mere suit for permanent injunction. Both the Courts below have found the plaintiff to be in possession of the suit

property. Even learned counsel for the defendants-appellants has admitted possession of the plaintiff over the suit property. Otherwise also, there is a concurrent finding of fact regarding possession of the plaintiff over the suit property. So, in these circumstances, both the Courts below have rightly decreed the suit of the plaintiff for permanent injunction. There is a finding returned by both the Courts below that the sale deed is in favour of the plaintiff and that sale deed cannot be said to be a forged and fabricated document.

So, in view of above discussion, I have no hesitation in holding that no substantial question of law has arisen in the present regular second appeal. Consequently, the appeal is without any merit and the same stands dismissed.

17.9.2015
SN

(K.C.PURI)
JUDGE