

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

RSA No.4119 of 2006 (O&M)

Date of Decision.05.08.2016

Shiv Kumar and others

.....Appellants

Vs.

Bal Kishan and others

.....Respondents

Present: Mr.D.S. Bali , Senior Advocate with
Mr. Salil Bali, Advocate
for the appellants.

Mr. Sudhir Mittal, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether Reporters of local papers 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?

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AMIT RAWAL J.

The appellants-defendants are aggrieved of the judgments and decrees passed by the Courts below whereby the suit for declaration and permanent injunction on the basis of two sale deeds dated 25.07.1990 and 10.06.1992 has been decreed.

Mr. D.S. Bali, Senior Advocate assisted by Mr. Salil Bali, Advocate appearing for the appellants-defendants in support of grounds of appeal has raised the following multi-fold arguments:-

(i) That the aforementioned sale deeds do not give correct picture of the identity of the property.

(ii) That both the Courts below have not referred to Ex.P3, sale deed dated 10.08.1990 whereby the identity of the property was corrected. The aforementioned fact was not pleaded in the

plaint and it was based only on the sale deeds Ex.P1 and P2.

The respondents-plaintiffs claimed declaration and permanent injunction on the basis of their 5340/7200 share in area of 11 kanals 13 marlas. A specific stand in the written statement qua the fictitious sale deed was taken and the same has also been proved on record, inasmuch as that the aforementioned land was sold by the General Power of Attorney Girdhari Lal, whom they never appointed as GPA. Even a FIR No.241 dated 25.06.2000 under Sections 420/467/468/471 IPC was lodged in this regard. Through testimony of DW3 Birmati, it has come on record that she was also the vendor. A specific stand in the written statement had been taken qua having acquired the ownership of the property by way of adverse possession, though the same was a foolish stand as the appellants-defendants had been occupancy tenants for more than 12 years and therefore, as per the provisions of Section 5 and 8 of the Punjab Tenancy Act, 1887, had become owners. Yet the trial Court did not frame the issue, much less, the lower Appellate Court also ignored this aspect. There is no reference to the judgment Ex.P6. Had all these facts been taken into consideration, the suit of the respondents-plaintiffs would have resulted into dismissal and therefore, urges this Court for setting aside the judgments and decrees passed by the Courts below by formulating the substantial questions of law drawn in the memorandum of appeal.

Mr. Sudhir Mittal, learned counsel appearing for the respondents-plaintiffs submits that finding of fact rendered by the Courts below cannot be interfered with unless and until the appellants-defendants are able to point out any gross illegality and perversity. Sale deeds dated 10.06.1992 and 25.07.1990 have been proved on record as Ex.P1 and P2

and the sale deed dated 10.08.1990 has been proved on record as Ex.P3. Copy of the order dated 7.10.1992 passed by Assistant Collector, 1st Grade, Jhajjar has been produced as Ex.P4. Ex.P5 to P17 are jamabandies and the judgments showing title in favour of the respondents-plaintiffs. The plaintiffs have already been held to be co-sharers vide judgment Ex.P6. The question of title has also been decided and therefore, the appellants-defendants cannot raise the issue of title in the present case. In Ex.P10, copy of the jamabandi, column No.9 shows "*bila lagan*" and therefore, the appellants-defendants had failed to prove tenancy. Once the plea of adverse possession has been taken, title of the respondents-plaintiffs is deemed to be admitted, thus, urges this Court to confirm the judgments and decrees passed by this Courts below by dismissing the second appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. D.S. Bali, learned Senior Counsel appearing for the appellants. Though the defendants in para 4 of the written statement had taken a stand that the sale deed were forged and fictitious, in fact, they had set up a counter claim that it is time barred as the sale deeds are of the years 1990 and 1992. As per the judgment Ex.P6, the plaintiffs have been held to be co-sharers. It is settled law that once the defendants had set up a plea of adverse possession, the title of the plaintiffs is admitted. No documentary evidence has been placed on record to claim the occupancy rights. The defendants have failed to prove the identity of the property though pleaded about correction of the same vide Ex.P3. It is settled law that as per provisions of Order 6 Rule 2 CPC, entire evidence is not to be pleaded and the pleading has to be in concise form. Once the plaintiffs have disclosed the fact with regard to

identity of the property, the plea disputing the identity of the property pales in significance.

There is no force in the submission that Birmati had never appointed Girdhari Lal as power of attorney on her behalf. The fact remains that the power of attorney was in vogue at the time when the sale deeds Ex.P1 and P2 were effected. It was not cancelled. There is another aspect of the matter that the defendants also filed Civil Suit No.886 of 1990 against the respondents-plaintiffs for permanent injunction from interfering with the possession but the same was dismissed. The appeal against the same was also dismissed vide order dated 15.09.1997 Ex.P7. The decree sheet passed in appeal is Ex.P8. Ex.P9 and P10 are the jambandies for the year 1972-73 and 1982-83 respectively. Mutation qua the sale deed has also been recorded in favour of the respondents-plaintiffs, much less, khasra girdawaries for the period 1998-2001, Ex.P17 has been proved on record. The appellants-defendants have taken inconsistent stands: (i) plea of adverse possession; (ii) sale deeds are forged and fictitious and (iii) they are occupancy tenants. They were not sure about their own stand. DW2, Rattan Singh unequivocally admitted that regarding the suit property, civil suit was decided between both sides in favour of the respondents-plaintiffs. The appellants are oblivious of the cross-examination of Birmati, DW3, who spilled the beans by admitting that Girdhari Lal, who was allegedly appointed as power of attorney was none else but the son of her own uncle and she herself appointed him as power of attorney. Rightly so observed by the Courts below, that in the year 1990-1992 when the sale deeds have been executed, no one has challenged those sale deeds at that time alleging that Girdhari Lal was never appointed as power of attorney. Moreover, Birmati

was not able to belie her signatures on the aforementioned power of attorney.

In view of the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same have been based on correct appreciation of facts and law as well as documentary and oral evidence, much less, no substantial question of law arises for consideration.

The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 05, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes