

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

R.S.A.No.905 of 2010 (O&M)

Date of Decision: November 17, 2016

Mohinder Singh

...Appellant

Versus

Jagjit Singh Kainth & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

**Present: Mr.Gurcharan Dass, Advocate,
for the appellant.**

**Mr.K.S.Chawla, Advocate,
for the respondents.**

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the simpliciter suit for injunction dated 11.2.2000 seeking restraint against the respondent-defendants for forcible interference and dispossession, has been dismissed by both the Courts below.

Mr.Gurcharan Dass, learned counsel for the appellant-plaintiff submits that by virtue of the two agreements to sell dated 6.1.1992 and 13.5.1994, Tarsem Singh and Chander Mohan agreed to sell the suit property measuring 225 Sq.Yards. The suit for specific performance was filed in the year 1994 and the same was decreed on 28.4.1999 on the basis of compromise Ex.PW1/A vide decree Ex.PW1/B. The vendors, aforementioned, stated to have sold 115 Sq.Yards out of the suit property, i.e., land measuring 225 Sq.Yards to Jagjit Singh Kainth-respondent No.1 vide sale deed dated 2.2.2000 and when there was a threat of forcible interference and dispossession, the suit aforementioned was filed.

He further submits that there is a categoric admission of the defendants regarding the possession, in essence Tarsem Singh and Chander Mohan were not having valid title to pass on and the appellant-plaintiff is residing in the house. The sale deed itself was valid one, but since only an injunction has been sought, therefore, he reserved the right to assail the same in separate proceedings in case any necessity arises. The execution of the aforementioned judgment and decree Ex.PW1/C has been satisfied as per the order of the Executing Court dated 28.1.2016. The respondent being subsequent vendee filed the objections against the execution of the judgment and decree dated 28.4.1999. The same were dismissed by the trial Court on 21.8.2015 and the appeal filed against thereto has also been dismissed on 3.12.2015. It is in this backdrop of the matter, the suit aforementioned was filed, but both the Courts below have abdicated in not granting the injunction, in essence there is misconstrual of the oral and documentary evidence. The agreements, aforementioned, reflect handing over the possession. They carry presumption of truth, much less evidentiary value as per Section 91 of the Indian Evidence Act and, thus, there is gross illegality and perversity.

Mr.K.S.Chawla, learned counsel for the respondent-defendants submits that the concurrent findings cannot /be interfered with and upset until and unless there is gross illegality and perversity, which the plaintiff has not been able to point out. The respondents are bonafide purchasers for a valuable consideration and they are in possession of 115 Sq.Yards of land, but do not dispute the dismissal of the objections and appeal against thereto. In fact, the appellant-plaintiff admitted the possession in the proceedings of the defendants and rightly so, both the Courts below have

declined the injunction and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submission of Mr.Gurcharan Dass, for, the facts noticed above are not in dispute. No doubt, Jagjit Singh respondent herein was not a party to the judgment dated 28.4.1999 as he had not acquired the right, title and interest in the suit property and the sale deed is of 2.2.2000 in respect of land measuring 115 Sq.Yards. If at all, he is aggrieved of the aforementioned fact, he is at liberty to take appropriate action against the vendors, but I cannot remain oblivious of the fact that he had filed the objections, which have been dismissed, much less the appeal, as noticed above. The recital in the sale deed of handing over the possession has resulted into passing of the judgment and decree and, thus, carries a presumption of truth as per provisions of Section 91 of the Indian Evidence Act. All these factors have not been taken care of, much less noticed by the Courts below and, thus, there is gross illegality and perversity. The judgments and decrees, therefore, are not sustainable in law and liable to be set-aside.

Mr.Chawla has feigned ignorance regarding availability of further remedy owing to the dismissal of Misc.Civil Appeal bearing No.16 of 2015 on 3.12.2015. He has also stated that as and when his clients wanted to enter in the premises, mostly the appellant used to call the police. The aforementioned statement would reveal that it is the plaintiff, who is in possession and not the defendants.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme

Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others, 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled.” [at paras 27 – 29]”

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the

commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the foregoing reasons, the impugned judgments and decrees of the Courts below are set-aside. The suit is decreed.

Appeal stands allowed.

November 17, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No