

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

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Date of decision: 21.03.2016

RSA 2352 of 2011 (O&M)

Kundan Singh *Appellant*

Versus

Kaushalaya Saini and others *Respondents*

RSA 2811 of 2011 (O&M)

M/s Sona Industries *Appellant*

Versus

Kaushalaya Saini and others *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. B S Bedi, Advocate
for the appellant

Mr. G.P.S. Bal, Advocate for
Respondent No. 1 (RSA 2811 of 2011)
for respondent No. 1 and 4 (RSA 2352 of 2011)

Ms Isha Goyal, Advocate,
for respondents No. 2 and 3

Mr. Ajaib Singh, Additional AG, Punjab
for the State of Punjab

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

This order will dispose of aforesated Regular Second Appeals

as these have emerged out of a judgment and decree dated 10.02.2011 passed by the Additional District Judge, Jalandhar, whereby three appeals were disposed of, by a common judgment.

The bone of contention in the litigation is ownership and possession of Shed No. B-27, Industrial Estate, Jalandhar, G T Road, Bye Pass, Jalandhar which was allotted to Shri Baldev Singh son of Sunder Singh by the department of Industries and Commerce, State of Punjab. Ms Kaushalaya Saini-respondent No. 1 filed the suit titled *Kaushalaya Saini v. The State of Punjab and others* seeking declaration that she is owner in possession of the aforesaid property on the basis of Will dated 02.11.1979, purported to be executed by Shri Baldev Singh, her father. Another suit (Civil suit 139/07) *Kundan Singh v. Naresh Mahajan and others* was filed by Kundan Singh-appellant for possession of the property in question and recovery of Rs.2,90,000.00 as damages for illegal and unauthorized possession of suit property by Shri Naresh Mahajan.

The suit titled *Kaushalaya Saini v. The State of Punjab and others* was consolidated with the other suit and both the suits were decided by a common judgment and decree dated 01.02.2008 passed by the Civil Judge (Junior Division) Jalandhar whereby suit filed by Kaushalaya Saini was dismissed and by Kundan Singh-appellant was decreed and the defendants were directed to hand over vacant possession of the suit property to Kundan Singh forthwith. The decree for recovery of mesne profits @ Rs.200.00 per month from November 1997 till filing of the suit on 02.05.2000 with interest @ 6% per annum till its realization was also granted.

The judgment and decree passed by the trial Court gave rise to

three appeals i.e. *RCA 253/08 Kaushalaya Saini v. The State of Punjab and others*, *RCA 237/2008 Naresh Mahajan v Kundan Singh and others* and *RCA 236/08 Kaushalaya Saini and another v. Kundan Singh and others*. All the appeals were disposed of by the Additional District Judge, Jalandhar vide a common judgment and decree dated 10.02.2011. The operative part of the judgment passed by the Court in appeal reads as follows:-

22.So this Court is of the considered view that Kaushalya Saini, Kundan Singh and Naresh Mahajan never became owner of the site in dispute and the learned lower Court has wrongly decreed the suit filed by Kundan Singh by giving him the possession. As he has never become owner and neither he has filed the suit on behalf of the firm, is alleging himself to be the partner. As such the findings of the learned lower Court in civil suit titled as *Kaushalya Saini v. Punjab State and others* are affirmed and upheld to the extent that it was rightly dismissed against Kaushalya Saini but the findings of the learned lower Court returned in the suit filed by Kundan Singh titled as *Kundan Singh v. Naresh Mahajan and others* are set aside and modified to the extent that possession of the disputed shed shall be restored to the Industries Department and Naresh Mahajan is in unauthorized possession of the disputed site and mesne profit at the rate of Rs.200.00 per month from November 1997 till filing of the suit on 02.05.2000 along with interest at the rate of 6% per annum till its realization and further from filing of the suit till restoration of the possession along with interest @ 6% per annum from the date of filing of the suit till its realization and the same is to be payable to the State/Industries Department and not

to Kundan Singh.

23. *In the net result, the appeal filed by Kaushalaya Saini titled as Kaushalya Saini v. State of Punjab and others bearing No. 253/08 is allowed with above modification. The second appeal filed by Naresh Mahajan v. Kundan Singh etc. bearing RCA No. 237/08 is dismissed with above modification. The third appeal filed by Kaushalya Saini arising out of the civil suit filed by Kundan Singh titled as Kaushalya Saini v. Kundan Singh bearing RCA No. 236/08 is also dismissed with costs. Counsel fee assessed Rs.500/-. Decree sheet be prepared. The learned lower Court file be returned along with copy of the judgment and the file of this Court be consigned to the record room. A copy of this judgment be placed in the connected appeal files bearing RCA No. 237/08 titled as Naresh Mahajan v. Kundan Singh and others and RCA No. 236/08 titled as Kaushalya Saini v. Kundan Singh.”*

Kundan Singh has preferred two separate appeals to assail the findings recorded by the appellate Court, non-suiting his claim to be owner of the suit property and issuance of directions that possession of the disputed shed shall be restored to the Industries Department.

Shri B S Bedi, Advocate representing the appellant would urge that the learned trial Court has rightly rejected claim of Ms Kaushalya Saini and accepted plea of the appellant that he has become owner of the suit property in view of documents i.e. Partnership deed dated 20.10.1972 Ex.P2, Deed of dissolution dated 14.09.1974 Ex.P4 and affidavit of Shri Baldev Singh, Ex.P5. It is argued that Shri Baldev Singh entered into a partnership with Kundan Singh for carrying out business under the name

and style of *M/s Sona Industries*, whereby Shri Baldev Singh agreed to make the suit property to be property of the partnership firm. The partnership entered into between Shri Baldev Singh and Kundan Singh was dissolved vide Deed of dissolution Ex.P4 whereby all rights in the property, goodwill, machinery etc. of the partnership firm *M/s Sona Industries* were agreed to vest in the party of the second part namely Shri Kundan Singh. Shri Baldev Singh also executed an affidavit Ex.P5 confirming the terms and conditions agreed between the parties vide Deed of Dissolution. It is vehemently argued that as the appellant became owner of the suit property on the basis of agreement between the original allottee Shri Baldev Singh and Shri Kundan Singh-appellant, Ms Kaushalaya Saini or for that matter any other Class I heir of deceased Shri Baldev Singh was left with no right, title or interest in the suit property as has been rightly held by the learned trial Court. In addition, it is submitted that since Shri Baldev Singh ceased to have any right, title or interest in the suit property in view of Deed of Dissolution Ex.P4 executed in the year 1974, the sale deed propounded by Shri Naresh Mahajan and Anju Mahajan having been executed by Shri Inderjeet Singh as an attorney of Ms Kaushalaya Saini in the year 1997 has got no bearing on the rights of the appellant in the suit property. It is further argued that Shri Naresh Mahajan entered into unlawful and illegal possession of the suit property two years prior to institution of the suit by the appellant, thus, he is not entitled to retain possession of the suit property.

Another submission made by counsel is that in the suit filed by the appellant titled *Kundan Singh v Naresh Mahajan and others*, the State of Punjab in the Industries department (commerce) was not arrayed as one

of the defendants. As the State of Punjab was not a party in the suit filed by Kundan Singh, the first appellate Court has committed a serious error rather illegality in modifying the judgment and decree passed in favour of Kundan Singh by holding that possession of the disputed shed shall be restored to the Industries Department and said department shall be entitled to mesne profits determined by the trial Court, payable by Shri Naresh Mahajan being in unauthorized possession of the disputed site.

Shri G.P.S. Bal, Advocate counsel representing Ms Kaushalya Saini and Inderjeet Singh - Respondent No. 1 and 4 (RSA 2352 of 2011) would urge that Kundan Singh failed to prove documents Ex.P2, Ex.P4 and Ex.P5 in accordance with law. Even if the documents aforesaid are taken into consideration, Kundan Singh never became owner of the suit property and the appellate Court has rightly held that the suit, if any, could be filed by the firm *M/s Sona Industries* and not by Shri Kundan Singh in his individual capacity.

Counsel representing respondents No. 2 and 3 namely Naresh Mahajan and Anju Mahajan (RSA No. 2352 of 2008) would endorse the contentions raised by counsel for respondents No. 1 and 4 and further pointed out that in Form 'A' Ex.D1, Shri Baldev Singh, allottee of the shed in question has not been recorded to be one of the partners of *M/s Sona Industries* and that is sufficient to falsify and belie correctness of the documents relied upon by the appellant. It is further argued that neither Shri Kundan Singh is the owner of the suit property nor he is entitled to seek mesne profits.

In reply, counsel for the appellant would urge that Shri Baldev Singh retired from the partnership firm with effect from 14.08.1974 as

incorporated in para 3 of the affidavit Ex.P5, therefore, in form 'A' Ex.D1 filed on 23.08.1974, Shri Baldev Singh has not been recorded to be one of the partners of the firm.

I have heard counsel for the parties, perused the paper books and the original records.

Before advertng to the submissions made by counsel for the parties, it is appropriate to note that neither Ms Kaushalaya Saini nor Shri Naresh Mahajan or Anju Mahajan have preferred an appeal against the judgment and decree passed by the appellate Court. Similarly, they have not filed any cross objections in the appeals preferred by Shri Kundan Singh, meaning thereby that they felt satisfied and have no grievance to express against the judgment and decree passed by the Court in appeal. Not only this, counsel representing them in the appeals preferred by Shri Kundan Singh have not made any submission qua ownership of Shri Baldev Singh, Ms Kaushalaya Saini or Anju Mahajan being successors-in-interest of Shri Baldev Singh.

Under the aforesaid circumstances, the only question that survives for consideration is *'whether Shri Kundan Singh appellant is owner of the suit property and is entitled to recover its possession from Shri Naresh Mahajan, admittedly in possession of the shed in question?'*

To claim ownership of suit property, Shri Kundan Singh has relied upon three documents i.e. Partnership Deed Ex.P2, Deed of Dissolution Ex.P4 and affidavit Ex.P5. Assuming that the documents have been proved in accordance with law and can be read into evidence without exception, the documents are not at all sufficient to confer ownership of the suit property upon Shri Kundan Singh. A relevant extract from Partnership

Deed Ex.P2 i.e. para 9, germane to the controversy, is reproduced hereunder for ready reference:-

“That the payments towards rent in respect to shed No. 27, Industrial Estate, Bye Pass, Jullundhar City shall be made on behalf of the Partnership firm and in case the above shed is transferred or sold by the Government to the party of the first part, Shri Baldev Singh being the allottee of the said shed, the transfer or sale shall be effected in the name of the firm and all agreements or sale deed in this respect shall be executed on behalf of the firm and shed shall be the property of the Partnership firm with all rights and liabilities thereto.”

In Deed of Dissolution Ex P4, the clause pressed into service by the appellant reads as follows:-

“That all rights towards property, goodwill, machinery etc. of the partnership firm M/s Sona Industries shall vest in the party of the second part.”

The affidavit Ex.P5 purported to be executed by Shri Baldev Singh in para 4 reads, quoted thus:

“4. That all rights to the property, machinery, goodwill etc. after my retirement vest in favour of Shri Kundan Singh son of Shri Rattan Singh who is carrying on business in the above shed for the purpose of which it was purchased from the Government on hire purchase basis.”

Indisputably, the property in dispute was not transferred or sold by the Government in favour of Shri Baldev Singh being allottee of the shed.

Counsel for the State of Punjab has submitted that shed in

question was resumed by the State and proceedings under the Public Premises (Eviction of unauthorized Occupants) Act, 1971 were initiated for taking over its possession. However, he is fair enough to concede that there is no document on record produced by the State in regard to resumption of the property or initiation of proceedings for eviction from the suit property.

Counsel for the appellant is not in a position to substantiate his plea or support findings of the learned trial Court that Shri Kundan Singh became owner of the suit property either in view of the Partnership Deed Ex.P2 or on the basis of Deed of Dissolution Ex.P4 and Affidavit Ex.P5. As per the settled position in law, no one can transfer a better right than one has in the property. As Shri Baldev Singh allottee of the suit property never became its owner as the shed in question was never transferred by the Government in favour of Shri Baldev Singh, there was no occasion for the Partnership firm or Shri Kundan Singh having derived any title to the suit property through Shri Baldev Singh.

Anju Mahajan wife of Naresh Mahajan has claimed ownership of the property on the basis of registered sale deed dated 13.10.1997 purported to be executed by Shri Inderjeet Singh, an attorney of Smt. Kaushalaya Saini. There is no denial that Ms Kaushalaya Saini claimed ownership of the suit property on the basis of testamentary succession from her father Shri Baldev Singh. As has been mentioned hereinbefore but at the cost of repetition, as Shri Baldev Singh never became owner of the suit property, Anju Mahajan cannot assert her ownership on the basis of sale deed dated 13.10.1997 executed by Ms Kaushalaya Saini through her attorney Shri Inderjeet Singh. In this view of the matter, findings recorded by the first appellate Court that neither Ms Kaushalaya Saini nor Shri

Kundan Singh nor Ms Anju Mahajan can claim to be owner of the suit property are liable to be affirmed and ordered accordingly.

This brings the Court to contention of the appellant to assail the findings qua entitlement of the Industries Department to recover possession as well as mesne profits from Shri Naresh Mahajan. Shri Naresh Mahajan claimed right of possession through his wife on the basis of sale deed dated 13.10.1997. Anju Mahajan and Naresh Mahajan have not preferred an appeal against the findings negating plea of Ms Kaushalaya Saini to have become owner of the suit property. Anju Mahajan cannot claim any right in the suit property on the basis of sale deed allegedly executed by the attorney of Ms Kaushalaya Saini.

There is no dispute that State of Punjab in the Department of Industries is not a party in the suit filed by Shri Kundan Singh against Shri Naresh Mahajan and others. However, the State of Punjab is a party in the suit filed by Ms Kaushalaya Saini in which Shri Kundan Singh is also one of the defendants. The first appellate Court has modified the judgment and decree passed by the trial Court in the appeal titled *Kaushalaya Saini v State of Punjab and others* (RCA 253/08) in the same terms in which modification has been made in the appeal titled *Kundan Singh v. Naresh Mahajan and others* namely that the Industries Department is entitled to have possession as well as mesne profits from Shri Naresh Mahajan. Under these circumstances, the mere fact that Industries Department is not a party in the suit filed by Shri Kundan Singh is of no consequence.

Examined from another angle, Shri Kundan Singh's claim in regard to ownership of the suit property has been rejected by the appellate Court and the findings in this regard have been affirmed hereinbefore. As

Shri Kundan Singh is not owner of the suit property, therefore, he cannot assert his claim for possession or mesne profits on the basis of his title. Needless to say that no sooner claim of the appellant regarding ownership is negatived, it is otherwise not open for him to assail findings of the appellate Court that possession of the disputed shed shall be restored to the Industries Department and it shall be entitled to mesne profits ascertained by the trial Court. In view of the above, no fault can be found in the findings that possession of the suit property would be restored to the Industries Department by Shri Narresh Mahajan, an unauthorized occupant thereof and liable to pay mesne profits assessed by the trial Court. The State of Punjab in the Department of Industries shall be entitled to take recourse to appropriate proceedings, in accordance with law, for taking over possession and recovering mesne profits etc.

In view of what has been discussed herein above, neither there is any merit in the appeals nor a question of law much less a substantial one arises for adjudication. As a natural consequence, both the appeals are dismissed, leaving the parties to bear their own costs.

Xeorx copy of this order be placed on the file of connected appeal.

(Rekha Mittal)
Judge

21.03.2016
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