

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

RSA No.1207 of 2012 (O&M)

Date of Decision.30.08.2016

Shyam Gokul Dass Ahuja

.....Appellant

Vs.

State of Haryana and others

.....Respondents

Present: Mr. Rajesh Garg, Senior Advocate with
Mr. Sundeep Kumar, Advocate
for the appellant.

Mr. D.K. Mittal, DAG, Haryana
for respondent Nos.1 and 2.

Mr. Tushar Sharma, Advocate
for respondent Nos.3 and 4 & 5(a) to 5(d).

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. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby claim in the suit or declaration and consequential relief of permanent and mandatory injunction on the premise that the plaintiff is the owner of the property as the defendant No.3, Sunil Sahni, had surrendered the possession vide agreement dated 30.05.1967, Ex.PW4/4 and therefore, she could not get the possession being a lessee in possession, has been dismissed by both the Courts below.

Mr. Rajesh Garg, learned Senior Advocate assisted by Mr. Sundeep Kumar, Advocate appearing for the appellant submits that the land measuring 50 kanals 14 marlas was purchased by sale deed dated

lessee, she surrendered and relinquished her right of lease and handed over possession vide agreement aforementioned i.e. 30.05.1967. However, vide notification dated 09.07.1996, the land in dispute was acquired under the Land Acquisition Act and resultantly, the Award dated 01.07.1998 came to be passed. Being lessee, she obtained compensation to the extent of 75%. Even the reference under section 18 of the Land Acquisition Act also filed and the amount was enhanced. In this background of the matter, the suit aforementioned was filed. Defendant No.3 did not appear in witness box but instead her son appeared to admit that company is in existence and machinery is installed and therefore, there is misconstrual and misreading of the oral and documentary evidence, thus, findings rendered are fallacious and perverse and urges this Court for setting aside of the judgments and decrees passed by the Courts below by formulating the substantial questions of law as drawn in the memorandum of appeal.

Per contra, Mr. Tushar Sharma, learned counsel appearing for the respondents-defendants submits that the lease agreement, *ibid*, has not been proved as neither attesting witnesses nor the signatory of the same has appeared in the witness box. The plaintiff has not chosen to appear before the Court. It is only the power of attorney who appeared and therefore, the defendants have been prevented to put specific question in the cross-examination. In support of their contentions, he relies upon judgments of Hon'ble Supreme Court in *Janki Vashdeo Bhojwani and another Vs. IndusInd Bank Ltd. and others (2005)2 SCC 217* and *Man Kaur (D) through LRs Vs. Hartar Singh Sangha 2010 (10) SCC 512*.

He further submits that mere exhibition of the document does not dispense with proof of the same. In support of his contention, he relies

upon judgment of Hon'ble Supreme Court in *Sait Tarajee Khimchand And Ors. vs Yelamarti Satyam Alias Satteyya and others AIR 1971 SC 1865.*

He also drawn attention of this Court to the statement of the power of attorney holder to contend that it was HUDA, who took the possession from defendant No.3, much less, the revenue record also showed the possession of HUDA and nothing prevented the plaintiff to get the same corrected. He further submits that the plaintiff had instituted a suit against one Ram Sarup, the alleged sub-lessee of defendant No.3 and in those proceedings, the aforementioned release deed dated 30.05.1967 was never pleaded nor it saw the light of the day and the suit was dismissed. Even the entries in the revenue record were also challenged and attained finality. All these facts have been taken into consideration by the Courts below while dismissing the suit, thus, urges this Court for confirming the findings rendered by the Courts below by dismissing the 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. Rajesh Garg, learned Senior Counsel appearing for the appellant and I am in full agreement with the submission of Mr. Tushar Sharma, learned counsel appearing for the respondents. The document on which heavy reliance had been made, had not been proved in accordance with law. It is settled law that mere exhibition of document cannot dispense with proof of the same. The defendants have been prevented to put specific question viz- a-viz the execution of the lease deed in the absence of plaintiff/signatory of the document, *ibid*. This proposition of law came to be reiterated in the judgments referred to above wherein it has been held that where principal is the signatory of the document, agent cannot depose in place of the principal.

Similar is the situation in the present case. There is no denial to the fact that in earlier round of litigation instituted against sub-lessee, Ram Sarup, release deed has not seen the light of the day.

In my view, the plaintiff has miserably failed to prove the pleadings referred to in the plaint and therefore, Courts below could not have granted the discretionary relief. For the foregoing reasons, I do not intend to differ with the findings rendered by the Courts below as the same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration in the second appeal. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 30, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No