

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

RSA No.3201 of 2013 (O&M)

Date of decision : 04.10.2016

Bahadur Singh

...Appellant

Versus

Ram Murti

..Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. H.S. Baidwan, Advocate for the appellant.

Mr. Balbir Singh Saini, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by both the Courts below, whereby, the relief of declaration that he is owner in possession and the alternative relief of possessory title in respect of house No.35, bounded as East Street 45', West House of Dhani Ram 45', North Street Side 2', South Shamlat land 20', situated at Village Mullanpur Garibdass, Tehsil Kharar, on the ground that property in dispute was sold to him through agreement to sell, registered GPA and Will of 05.12.1994.

Mr. H.S. Baidwan, learned counsel appearing on behalf of appellant-plaintiff submits that aforementioned documents executed were in consonance with the provision of Section 202 of the Indian Contract Act

which is recognized in law. Appellant had paid the amount of ₹63,000/- which was split in the following manner:-

- i) ₹8000 by way of cash
- ii) ₹25,000/- and ₹30,000/- by way of Cheque.

However on 10.08.2005 and on 14.11.2005, the respondent cancelled the power of attorney and as well Will which necessitated the appellant-plaintiff to institute the suit, aforementioned. The defendants admitted the receipt of the money of ₹55,000/- but denied receipt of the cash. The provision of Section 202 of the Indian Contract Act had been recognized in law till the judgment rendered by the Hon'ble Supreme Court in *Suraj Lamp and Industries P. Ltd. Vs. State of Haryana and another, 2011(4) RCR (Civil) 669*, but yet Courts below did not grant relief of injunction but failed to protect the possession and forcible dispossession in terms of provision of Section 53(A) of the Transfer of Property Act and thus urges this Court for modifying the judgment and decree under challenge.

Per Contra, Mr. Balbir Singh Saini, learned counsel appearing on behalf of respondent-defendant submits that there was ban on the sale thus documents aforementioned executed were the outcome of some friendship. In fact, defendant had not intended to part with in the suit property, much less, title. He is willing to return the amount provided that possession is handed over. Possession goes with the title. Once appellant has not been held to be owner, he cannot retain the possession and possession is of trespasser. Possession of trespasser can not be protected and urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the

paper book and of the view that there is some force and merit in the submission of Mr. H.S. Baidwan, vis-a-vis the grant of injunction as it is ex facie proved on record that since 1994, till filing of the suit, till today, appellant-plaintiff is in possession. If person is in long and settled possession, he can not be dispossessed except in due course of law and in view of law laid down by Hon'ble Supreme Court in *Rame Gowda (deceased) by LRs Vs. M. Varadappa Naidu (d) by LRs and another, 2004 (1) SCC 769*. Receipt of ₹55,000/- is also a matter of record. In my view, Courts below ought to have granted the injunction in terms of provision of Section 53(A) of Transfer of Property Act to the effect that the respondent-defendant, his agent etc. cannot take the possession except in due course of law, but as regard judgment and decree of the Courts below declining the relief of declaration, there is no merit as sale of property through execution of documents referred above, in terms of Suraj Lamp's (Supra) is not permissible, is hereby upheld.

Accordingly, Suit is partly decreed. The respondent-defendant and his agent, etc. are restrained from interfering into the peaceful possession and forcible dispossession except in due course of law.

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 reasons aforementioned, the findings rendered by the Lower Appellate Court are set aside. The suit of appellant-plaintiff succeeds. The judgment and decree of the trial Court is restored.

Resultantly, the Regular Second Appeal is partly allowed.

Decree-sheet is ordered to be prepared.

04.10.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No