

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

RSA No.2871 of 2016 (O&M)

Date of Decision: 06.10.2016

Wazir Singh and others

...Appellants

Vs.

Mange Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Anil Kumar Gahlawat, Advocate,
for the appellants.

Amol Rattan Singh, J (Oral)

CM No.7737-C of 2016

By this application, the legal representatives of respondents no.4 and 6, are sought to be impleaded in their place as respondents, in view of the fact that both the aforesaid respondents, i.e. Smt. Parwati, respondent no.4 and Smt. Chandro, respondent no.6, are stated to have died during the pendency of the proceedings before the Courts below.

Consequently, deletion of the names of the aforesaid respondents has also been prayed for.

Though normally, notice would be issued to the other respondents in such application, however, since eventually the appeal itself is being dismissed, as would be seen, I see no reason to disallow the application. Consequently, the application is allowed, subject to all just exceptions and the persons named in paragraph no.3 as the legal heirs of respondents no.4 and 6 respectively, are ordered to be impleaded in their place and the memo

of parties annexed with the appeal, is accepted as it is, since it is already reflecting the names of legal heirs of both respondents no.4 and 6, at the relevant place.

RSA No. 2871 of 2016

1. This is the second appeal filed by the sons/legal representatives of the first defendant, in a suit filed by respondent no.1 herein, Mange Ram (hereinafter to be referred to as “the plaintiff”), seeking a decree of declaration and permanent injunction, in respect of the suit property which the respondent-plaintiff claimed to be owner in possession of, after a registered sale-deed dated 19.08.1974 was executed in his favour by the original owner thereof, one Devi Chand (grand-father of the present appellants-defendants).

The plaintiff further sought a correction in the revenue entries so as to reflect his name as the owner in possession of the suit property, and yet further, he prayed that a mutation, bearing no.525, entered in the revenue record in favour of the appellants-defendants, be also declared to be null and void.

The suit having been decreed in favour of the plaintiff and the first appeal filed by the present appellants-defendants having been dismissed, the present second appeal has come to be filed.

2. As per the case set up by the plaintiff, he and the grand-father of the present appellants, (father of the original defendant no.1, Sher Singh, now deceased), were both permanent residents of village Santokhpura, Tehsil Charkhi Dadri, District Bhiwani. The grand-father, Devi Chand, is stated to have executed a registered sale-deed, bearing no.564, on 19.08.1974, in

respect of 8 marlas of land, in favour of the plaintiff, for a sale consideration of Rs.400/-. The possession of the suit property was also stated to have been handed over to the plaintiff by Devi Chand.

Hence, it was contended in the suit, that the appellants-defendants had no concern with the suit property after that, and in fact, though the plaintiff used to serve in Delhi, the Halqa Patwari had eventually entered mutation no.459 in favour of the plaintiff, upon the plaintiffs' application, as also pursuant to having received a notice regarding the sale of the suit property from the office of the Sub-Registrar.

However, thereafter, that mutation was cancelled by the Halqa Patwari without giving any notice to the plaintiff and instead mutation no.525 was entered in favour of the defendants, they being the sons, daughters and grand children of Devi Chand.

It was contended that since notice had not been issued to the plaintiff, he had no knowledge of the mutation till 16.01.2005, when he visited the village and the first appellant herein, Wazir Singh, expressed his desire to purchase the suit property from the plaintiff, which the plaintiff refused.

Thereafter, allegedly, the first appellant-defendant also threatened the plaintiff, and only thereafter the plaintiff came into knowledge of the mutation of inheritance entered in favour of the defendants.

It was further contended that the defendants tried to take forcible possession of the suit property and to alienate it, leading to the filing of the suit, on 19.02.2005.

3. Upon notice issued to them, defendants no.1 to 3 filed a joint

written statement which was subsequently adopted by respondents no.4 to 6 also, i.e. the daughters and grand children of Devi Chand, with defendant no.7, Rajbir (son of one of the daughters of Devi Chand and brother of defendant no.8), not having appeared. He was consequently proceeded against ex parte.

In their written statement, other than usual preliminary objections, it was contended that the plaintiff was in knowledge of the usage and possession of the suit property by the defendants and that as a matter of fact, no sale-deed dated 19.08.1974 had been executed by Devi Chand in favour of the plaintiff.

They further claimed that they had constructed their house on the suit land, which was never possessed by the plaintiff and still further, they also staked their claim over the property by way of adverse possession.

The stand further was that in case there was any sale-deed, it was based upon a forgery.

On the aforesaid pleadings, the following issues were framed by the learned Civil Judge (Sr. Divn.), Charkhi Dadri:-

- “1) Whether the plaintiff is entitled to a decree for declaration to the effect that he is owner in possession of the suit land by virtue of sale deed no.564 dated 19.08.1974 and he is also entitled to get the revenue record corrected in his favour accordingly and mutation no.525 in favour of the defendants is illegal, null and void and liable to be set aside?OPP
- 2) Whether the plaintiff is entitled to a decree for permanent injunction as prayed for?OPP

- 3) Whether present suit is time barred OPD
- 4) Whether the present suit is not maintainable in its present form?OPD
- 5) Whether plaintiff is stopped to file the present suit by his own act and conduct?OPD
- 6) Whether defendants have become owners of the suit land on the basis of adverse possession ?OPD
- 7) Relief.”

4. The plaintiff examined himself and one Suresh son of Mani Ram (his nephew) by way of oral evidence and tendered the sale-deed dated 19.08.1974 as Ex.P-1.

On the other hand, the first appellant herein examined himself as DW-1 and one Anil Kumar son of Kartar Singh as DW-2.

5. Upon appraisal of the evidence, pleadings and arguments, the learned Civil Judge found that though the witnesses for the defendants, including present appellant No.1, had deposed in terms of their written statement, however, it was admitted that there was no kitchen, latrine and bathroom in the house stated to have been constructed by DW-1 (appellant No.1 herein), in the year 1996. It was also admitted that there was no electricity connection in the said house.

This witness also admitted that the plaintiff resides in the village and occasionally goes to Nangloi/Delhi once or twice.

Yet further, the witness had also claimed that another house, wherein his children had been residing, was joint property. He also admitted

that in the documents relied upon by the defendants, the number of properties was not given.

Further, DW-2, Anil Kumar, though had supported the claim that the defendants were in possession of the suit property, admitted that he was not aware of what was written in his affidavit, submitted by way of his examination-in-chief (Ex.DW-2/A).

6. On the other hand, the plaintiff proved the registered sale deed dated 19.08.1974 (Ex.P-1), as also mutation no.449 (Ex.P-2), entered in favour of the plaintiff on the basis of the sale deed. Thereafter, however, that mutation entry was cancelled in the year 1983 due to non-appearance of the plaintiff before the revenue authorities, after which the mutation of inheritance, no.525, was sanctioned in favour of the defendants on 08.02.2005.

With PW-2, i.e. the nephew of the plaintiff, having also having testified that he was taking care of the property on behalf of the plaintiff while the latter was serving in Delhi, the learned Civil Judge found that the ownership and possession of the suit property, by the plaintiff, stood duly proved.

As regards the plea of adverse possession, it was held that the defendants in any case could not raise that plea, they having stated that they had inherited the suit property in their own right, from their grand-father and predecessor-in-interest, Devi Chand.

7. On the issue of limitation, it was held that as the mutation conferred no title, and the registered sale-deed was 26 years old (actually more than 30 years old on the date of the institution of the suit), it was

bound to be given effect to, and no question of limitation would therefore arise.

Consequently, the suit of the plaintiff was decreed in his favour.

8. In the first appeal filed by the appellants, the learned Additional District Judge, Bhiwani, also on the same reasoning, dismissed that appeal, leading to the filing of the present second appeal.

9. Learned counsel for the appellants has very vehemently argued that actually it was the appellant who was in possession of the suit property and not the respondent-plaintiff (Mange Ram), and to that effect the appellant had also examined himself and DW-2, one Anil, to assert that he had even constructed over the suit property.

As regards the plea of adverse possession, 'discarded' by the learned Courts below, on the ground that the appellants were also claiming to be in possession of the suit property by virtue of their ownership, learned counsel has submitted that in fact that plea is not being pressed by him, in view of the fact that the title of the respondent-plaintiff itself is denied by the appellants.

He has further submitted that no evidence other than the sale deed itself was led by the respondent-plaintiff, by way of examining any person from the office of the sub-Registrar, to verify the factum of the sale deed having been actually registered.

10. Having considered the aforesaid argument, as also the judgments of the learned Courts below, the first fact to be noticed is that the respondent-plaintiff had led by way of evidence a sale deed (Ex. P-1), dated 19.08.1974, by which the aforesaid Devi Chand is stated to have sold the suit

property to him.

The sale deed being a registered sale deed, a mutation in that respect was also entered in favour of the respondent-plaintiff but thereafter, allegedly without notice to the plaintiff, a mutation of inheritance was instead entered in favour of the appellants.

The learned Courts below have found that the mutation of inheritance was wrongly entered and the registered sale deed having been duly proved, the respondent-plaintiff was the owner of the suit property on the basis of that sale-deed.

11. Undoubtedly, the suit was filed on 19.02.2005 and obviously evidence was led thereafter. The sale deed being of the year 1974, it was a document more than 30 years old and as such, being a registered document, was admissible in evidence, *per se*, in terms of Section 90 of the Indian Evidence Act 1872.

The onus thereafter shifted on to the appellants to rebut the correctness of the document, which they are not seen to have done in any manner, other than by their oral assertion to the contrary.

If there was any doubt with regard to the registration of the sale deed of the year 1974, the onus then fell on the appellants-defendants to produce records from the office of the sub-Registrar and to examine any official they wished to in that regard, to prove that no such sale deed had actually been registered, or that it was a forged sale deed.

That not having been done, the issue then would be as to whether the respondent-plaintiff could have filed a suit seeking declaration without seeking possession of the suit property. However, actually, the suit

filed was one seeking a declaration and permanent injunction, with the respondent-plaintiff claiming to be in possession of the suit property.

In that regard, on possession, as already noticed, learned counsel has very vehemently stressed that the appellants specifically had examined another witness other than the appellant-defendant, who too testified that the appellant had constructed over the suit property. Yet, in his own deposition, the appellant, as DW-1, testified that a house had been erected, though not with a concrete roof, and without a latrine and bathroom and that he had not ever obtained any electricity connection for the house. Even then it was contended that the possession of the appellant over the suit property stood proved.

12. Having considered the aforesaid argument also, I find myself unable to agree with it, in view of the fact that, obviously, in the absence of any electricity connection, a latrine and a bathroom, the house remained unoccupied. No evidence to the contrary with regard to actual residence, other than oral testimony, is seen to be forthcoming.

Admittedly, the appellant was serving as a Fireman in the Municipal Committee, Charkhi Dadri, and consequently not residing in his village.

Of course, without a doubt, the respondent-plaintiff, even as per his own stand, was also serving and residing in Delhi. However, the appellant in his testimony has admitted that the respondent-plaintiff also visited the village from time to time and eventually in cross-examination, he stated that he spent more time in the village and some time in Delhi.

Learned counsel has still further submitted that an application

for appointment of a local commissioner was made by the appellants, which had been rejected by the learned Civil Judge (Sr. Divn.), Charkhi Dadri, with no challenge to the said order of that Court.

Though, of course, the appellants could still refer to that in appeal, however, in the absence of any firm proof that the appellants were actually in physical possession of the suit land, simply a statement saying that they had erected construction thereupon, would not be evidence enough to disprove the possession of the respondent-plaintiff, who examined his nephew, one Suresh son of Mani Ram, whose testimony was believed by the Courts below, to the effect that in the absence of his uncle, i.e. the respondent-plaintiff, he was looking after the suit property. This is to be again seen with the appellants' own testimony admitting that the plaintiff was residing both, in the village and in Delhi.

Had of course the appellants shown any proof of actual residence over the construction stated to have been raised over the suit property, (which construction was also not strictly proved), the matter may have been different. However, with no proof of actual possession by the appellant-defendants, I find no reason to interfere with the finding of fact of the Courts below, that it was actually the respondent-plaintiff who was in possession of the suit property, earlier even through his nephew, with him also having been proved to be the owner of the suit property since 1974, by virtue of the sale deed, Ex.P-1.

Hence, finding no merit in the appeal, it is dismissed in limine, with no order as to costs.

Civil Misc. Nos.7733-34-C of 2016

In view of the fact that the appeal itself has been dismissed in limine on merits, without notice having been issued to the respondents, the question of condoning the delay of 138 days in refiling, and 230 days in filing the appeal, is rendered academic and is not gone into.

October 06, 2016
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking ? Yes

Whether reportable ? Yes