

Regular Second Appeal No.2111 of 2015 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2111 of 2015 (O&M)
Date of Decision: May 27th, 2016

Gurdeesh Kumar alias Deesa Halwai

...Appellant

Versus

Lord Shiv Mandir, Kanshipuri, Marrian Road, Patiala-Rajpura Road,
Patiala & another

...Respondents

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

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?

Present: Mr.Aakash Singla, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Appellant-defendant No.2 only has invoked the jurisdiction of this Court under Section 100 of the Civil Procedure Code assailing the judgments and decrees of both the Courts below, whereby he along with defendant No.1 Rajinder Mittal had been restrained from interfering in the peaceful possession of the plaintiff over the plot, i.e., the suit property.

Mr.Aakash Singla, learned counsel appearing on behalf of

appellant-defendant No.2 submits that the judgments and decrees of both the Courts below are wholly fallacious and perverse, for, have non-suited the defendants by not relying upon the writings dated 6.3.1998 and 21.9.1999 for want of registration. He further submits that the plaintiff, vide writing dated 6.3.1998, had conveyed the title to Rajinder Mittal and in view of the amendment caused in the Registration Act on 24.9.2001, the aforementioned documents did not require registration. Even otherwise, the documents did not require attestation in view of the judgments rendered in **Nawal Singh Versus Panchiya Ram (deceased by L.R.) and another**, 1983 AIR (Allahabad) 1, **Ashok Indoria Versus Vidyawanti**, 2015 AIR (Delhi) 5, Para 8 of **Narmada Enterprises Versus State of M.P.**, 2014(4) R.C.R. (Civil) 1052 (Jabalpur Bench) and **Smt.Hans Raji Versus Yosodanand**, 1996 (1) R.R.R. 423.

He further submits that the aforementioned writings entail handing over possession to defendant No.1, whereas on the contrary relied upon the jamabandi for the year 2006-07 to form an opinion that it is the plaintiff, who is recorded as owner in possession of the property, whereas injunction was sought in respect of plot. He further submits that in cross-examination of plaintiff, it has surfaced that the plot is bounded and, therefore, irresistibly it is concluded that the boundary wall was

raised by the defendants. As per agreement dated 21.9.1999, Rajinder Mittal had further passed on the title to Mandir Dargah Baba Peer Rattan Nath Peshawar Wale, to whom appellant-defendant was a trustee. In view of such fact, the Courts below have not struck the balance by examining the evidence on record, in essence the respondent-plaintiff has failed to prove the possession over the property and, therefore, injunction ought not to have been granted. Both the Courts below have also failed to appreciate the provisions of Section 53A of the Transfer of Property Act, by virtue of which Rajinder Mittal-defendant was put into possession and, therefore, in law, the possession was liable to be protected. As per **Ashok Indoria's case (supra)**, agreement does not require registration, much less attestation. Even non-examination of the witnesses of the defendants would not be fatal, whereas the documents, aforementioned, have been proved through the testimony of an Expert. All these factors have not been noticed by both the Courts below and, therefore, urges this Court to formulate substantial questions of law as culled out in the memorandum of appeal.

I have heard the learned counsel for the appellant and appraised the paper book and of the view that the appeal at the instance of defendant No.2 is wholly misconceived. Defendant No.1 has not assailed the findings either before the Lower Appellate Court or in this

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Court. No copy of trust deed has been placed on record to show that defendant No.2 is a trustee. The writings, aforementioned, are alleged to have been executed between the plaintiff and defendant No.1, whereas defendant No.1, as noticed above, did not assail the findings either before this Court or before the Lower Appellate Court. In my view, defendant No.2 does not have locus-standi.

Section 3 of the Transfer of Property Act prohibits the attestation of the documents. For the sake of brevity, relevant portion of Section 3 reads thus:-

“3. Interpretation clause.—xxx xxx xxx

“attested”, in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of

attestation shall be necessary”.

All the judgments cited above are passed after interpreting the facts while taking into consideration the facts and as well as the nature of the relief sought. In most of the cases, there is interpretation of Will in a suit for possession etc. Each and every case, particularly in a case of injunction when the title is not involved, has to be examined on the basis of the possession being proved.

Argument of Mr.Singla that the jamabandi could not have been looked into when the property falls within the urban area, is not able to cut the ice. No documentary evidence, much less notification that the property had fallen within the area of Municipal Committee, has been proved, much less placed on record. I am of the view that defendant No.2 had not been able to prove the possession, much less locus standi through any documentary evidence and oral evidence, except that the plaintiff had alleged a threat from him for interference and a person having threat can always seek intervention of the Court for protection as has been sought in this case.

Appellant-defendant No.2 has also failed to produce any evidence with regard to raising of construction, as has been raised in this Court that the plot in question was bounded either by examining the mason or the person from whom the bricks and building material have

been purchased.

For the foregoing reasons, the appeal is hopelessly devoid of merit, much less misconceived. No substantial question of law arises for determination. The same is accordingly dismissed.

May 27th, 2016
ramesh

(AMIT RAWAL)
JUDGE