

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

**C.M. NOS.6482 C OF 2015 & 335 C OF 2016 AND
R.S.A. NO.2478 OF 2015**

DATE OF DECISION: FEBRUARY 17, 2016

Koyal Devi and others

.....Appellants

VERSUS

Mukesh and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

**Present: Mr. Rajesh Lamba, Advocate,
for the appellants.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.6482 C of 2015

Prayer in this application is for leading additional evidence on behalf of applicant-appellants in the form of a ration card of Hira Lal, Annexure A-1.

It is the assertion in the application that the said ration card was in the name of Hira Lal, husband of appellant No.1 and father of appellant Nos.2 to 6, which shows that Hira Lal had been staying in the village till the year 1985 and, therefore, the stand of the respondent-defendants that oral sale deed had taken place in the year 1970 qua the said plot, cannot sustain.

This contention of the counsel for the applicant-appellants cannot be accepted as there are no pleadings on behalf of the applicant-

appellants to the effect that they have been residing in the village upto the year 1985, what to say in the house in dispute. The reason assigned that the said document was not to the knowledge of the applicant-appellants also does not carry any weight. In any case, keeping in view the fact that there are no pleadings to this effect, the said document cannot be permitted to be taken on record as additional evidence.

The application, therefore, stands dismissed.

C.M. No.335 C of 2016

Application is allowed.

Statements of DW1 to DW4 (Annexures A-2 to A-5) are taken on record subject to just exceptions.

R.S.A. No.2478 of 2015

Challenge in this appeal is to the judgment and decree dated 24.03.2014 passed by the Civil Judge (Junior Division), Gurgaon, whereby the suit for mandatory injunction, directing the respondent-defendants to vacate the house, as fully detailed in Para 1 of the plaint, and to hand over vacant possession of the same to the appellant-plaintiffs as the licence was given to the predecessor-in-interest of the respondent-defendants, namely, Puran Singh by Munni Lal, predecessor-in-interest of the appellant-plaintiffs and when after service of notice on 17.08.2011 no response was received, the present suit has been initiated and in the alternative prayer for decree of possession was also made, stands dismissed, appeal against which preferred by the appellant-plaintiffs has also been dismissed by the Additional District Judge, Gurgaon, on 10.11.2014.

It is the contention of learned counsel for the appellant-plaintiffs that the findings as recorded by the Courts below cannot sustain,

especially when it has been stated that an oral sale of the property, as detailed in the suit, had taken place in the year 1970 in favour of Puran Singh by Munni Lal, predecessors-in-interest of the parties. He contends that no specific evidence has come on record with regard to the said sale having been ever taken place. He contends that as a matter of fact, Puran Singh was inducted as a licensee in the suit property and had been continuing as such and, thus, the said finding cannot sustain. He contends that had there been any sale, the same would have been reflected in the revenue records. The revenue records, till date, depicts the ownership and possession of Munni Lal and, therefore, the stand of the respondent-defendants with regard to the oral sale having been taken place in the year 1970 cannot be accepted. He submits that in the written statement no specific name has been mentioned as to in whose presence the oral sale has taken place and in the absence of such an evidence, the findings, as recorded by the Courts below with regard to oral sale of the suit property having taken place, cannot sustain. His further contention is that the stand of the respondent-defendants that they have constructed a house over the land has not been established by them. In fact the house was constructed by Munni Lal and it is in this house that Puran Singh was inducted. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set-aside.

I have considered the submissions made by learned counsel for the appellants and with his able assistance have gone through the impugned judgments as also the evidence, which has been placed on record.

The findings, as have been recorded with regard to the oral sale deed, which occurred in the year 1970, finds mention in the written

statement. This assertion has been supported by the witnesses, DW2 to DW4. However, except for DW4 Om Parkash, no other witness has stated that the oral sale had taken place in their presence. The other witnesses, namely, DW2 Sardar Singh and DW3 Raghbir have stated that they had come to know about the sale of the plot and have seen the house being constructed by Puran Singh and that too only after the oral sale. Only one of the witnesses, namely, DW2 Sardar Singh had stated that one room was constructed by Munni Lal at the time when the sale deed had taken place. The fact remains that construction of the house by Puran Singh has been fully proved on the basis of oral evidence.

On the part of the appellant-plaintiffs, the evidence led by them is the sole oral statement of PW1 Hira Lal. This witness has not been able to assert any aspect with regard to the date on which the property was given to Puran Singh as licensee by Munni Lal. As a matter of fact, neither in the plaint nor in his statement even the year of licence has been mentioned. In the absence of such an averment and evidence being there, the findings, as recorded by the Courts below, cannot be faulted with, especially when the possession of the property is admittedly with the respondent-defendants.

The contention of the counsel for the appellant-plaintiffs that had there been a sale deed, the same should have been reflected in the revenue records, which shows ownership of the appellant-plaintiffs but the same cannot be accepted as the said revenue records cannot be believed and accepted to be correct, especially when admittedly the possession of the suit property is with the respondent-defendants. The revenue records, on which reliance has been placed by the appellant-plaintiffs, show not only the ownership to be that of Munni Lal but his possession thereon as well. The

revenue records, thus, are contrary to the actual situation as it exists on the ground qua possession. It may not be out of place to mention here that admittedly both the parties are related to each other and if that be so, an oral sale deed do occur and take place between them as the parties have faith and believe the word of mouth. Admittedly, the appellant-plaintiffs had shifted to Gurgaon but for the last more than 50 years they have not taken any steps to protect and check their right of ownership over the property, especially when the construction of the house was being carried out by Puran Singh. The findings, thus, recorded by the Courts below, being in accordance with the pleadings and the evidence brought on record, do not call for any interference by this Court.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

February 17, 2016
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE