

RSA No. 1281, 1804 and 2440 of 2014

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 25.4.2016

RSA No. 1281 of 2014 (O/M)

Surinder Kaur and another

..... Appellants

Versus

Pritam Kaur and others

..... Respondents

RSA No. 1804 of 2014 (O/M)

Surinder Kaur and another

..... Appellants

Versus

Mohinder Singh and others

..... Respondents

RSA No. 2440 of 2014 (O/M)

Surinder Kaur and another

..... Appellants

Versus

Mohinder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. H.S. Hooda, Senior Advocate, with,
Mr. Subhash Ahuja, Advocate, for the appellants
in all the cases.

Mr. Kanwaljit Singh, Senior Advocate, with,
Ms. Gurdeep Kaur, Advocate, for respondent No. 1
in RSA No. 1804 of 2014.

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Mr. Lakhwinder Singh, Advocate,
for respondent No. 2 in RSA No. 1281 of 2014.

Mr. Gaurav Chopra, Advocate,
in CM Nos. 14771 and 14772 of 2014
in RSA No. 2440 of 2014.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

Impugned in the present regular second appeals i.e. RSA No. 1281 of 2014, RSA No. 1804 of 2014 and RSA No. 2440 of 2014, titled as Surinder Kaur and another Versus Mohinder Singh and others, is the order dated 1.6.2013, passed by the learned Additional District Judge, Chandigarh, dismissing the appeal filed by the plaintiffs against the findings recorded on issue No. 1, whereas appeal filed by Mohinder Singh and cross objections filed by Pritam Kaur were allowed.

Brief facts of the case are that Surinder Kaur and Sandeep Singh (plaintiffs) filed a suit for recovery of possession of Shop-cum-Flat No. 97, Sector-35-C, Chandigarh. According to the plaintiffs, Jagdish Kaur alongwith Kamaljit Singh Thandi were owners in possession of the aforesaid disputed site/premises, which was allotted to them by Chandigarh Administration, vide allotment

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No. 3459/CPL-2542, dated 24.4.1979, to the extent of one half share each. The possession was delivered to them on 19.7.1985. Kamaljit Singh Thandi transferred his all rights, title and interest in the said property to the present plaintiffs, Satpal Singh, Swaranjit Kaur and Sarwan Singh on 4.12.1990 and executed a document to this effect in their favour for completion of the sale deed in the form of registered General Power of Attorney, an affidavit, an agreement to sell and a registered Will/deed in their favour.

It is further stated that Jagdish Kaur also agreed to sell her one half share to the plaintiffs, vide agreement dated 27.8.1989. Rs. 2 lacs were paid as earnest money in part performance of the sale. The possession of one half share was to be delivered to the plaintiffs after getting the same vacated from U.P. Handloom. The same was got vacated from U.P. Handloom in May, 1990. Thereafter, the possession was also handed over. It is further alleged that Kamaljit Singh Thandi filed a suit for declaration and permanent injunction against Jagdish Kaur and Daljit Kaur, in which interim injunction was granted by the learned Sub Judge 1st Class, Chandigarh, on 14.2.1990, directing the parties to the suit to maintain status quo regarding the suit property. After the death of Jagdish Kaur, the plaintiffs filed a suit for permanent injunction against Sadhu Singh, Ajaib Kaur, Pritam Kaur and Sardul Singh etc.,

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in which the order of status quo during the pendency of the suit regarding alienation and possession was passed on 21.3.1992. The plaintiffs were in possession of the entire property and their domestic goods were lying inside on the ground floor of the said property. Jagdish Kaur died on 3.2.1992. Defendants No. 1 and 3 in connivance with defendant No. 2 forged a lease deed dated 9.10.1991, alleging that Jagdish Kaur let out the ground floor of the said property to them, on the basis of which they have now entered into unlawful possession of the same in collusion with defendant No. 2 and the police authorities. An FIR against defendant No. 2 has been lodged. In the civil suit, no plea was taken regarding handing over the possession of the disputed property to defendants No. 1 and 3.

In the written statement, defendants No. 1 and 3 took the plea that Kamaljit Singh Thandi had executed the power of attorney in favour of Daljit Kaur Thandi on 28.4.1972. On the basis of said power of attorney, Daljit Kaur Thandi executed a relinquishment deed dated 12.12.1977 in favour of Jagdish Kaur. Jagdish Kaur executed agreement of sale dated 20.1.1990 in favour of defendants No. 1 and 3. Defendants No. 1 and 3 have filed a suit for specific performance for transfer of the property in their favour, which is pending in the Court of the learned Sub Judge 1st Class,

Chandigarh, against the legal heirs of Jagdish Kaur. The ground floor of shop in question, which was earlier in possession of U.P. Handloom was got vacated in the month of May, 1990. Jagdish Kaur entered into an agreement of lease with the defendants and they are in possession of said premises as tenants of Jagdish Kaur.

From the pleadings, following issues were framed :-

- “1. Whether the plaintiff alongwith Satpal Singh and Swaranjit Kaur and Sarwan Singh purchased $\frac{1}{2}$ share of Kamaljit Singh in the suit property vide valid registered sale deed dated 4.12.90 ? OPP
2. Whether Jagdish Kaur executed an agreement on 27.8.89 in favour of the plaintiff for sale of her remaining $\frac{1}{2}$ share in the suit property and put the plaintiff in possession ? OPP
3. Whether the plaintiff is in possession of the ground floor of suit property on 22.11.92 and were forcibly dispossessed by the defendant ? OPP
4. Whether the suit is properly valued for the purpose of court fee and jurisdiction ? OPD
5. Whether the suit is within time ? OPP
6. Whether the plaintiffs are entitled to the possession of the suit property ? OPP
7. Whether Jagdish Kaur entered into an agreement dated 20.1.90 with the defendant for the sale of the suit property ? If so, its effect ? OPD
8. Whether Jagdish Kaur entered into an agreement of lease with the defendant and put the defendant

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in possession as tenant ? If so, its effect ? OPD

9. Relief. ”

The learned Civil Judge (Junior Division) Chandigarh, vide judgment dated 30.11.2009, held that the plaintiffs have been illegally dispossessed and, therefore, the suit of the plaintiffs for possession was decreed. In the said judgment, the findings were recorded that the agreement of sale was executed in favour of Mohinder Singh. It was held that on account of status quo, the possession could not be delivered to Mohinder Singh.

Against the said judgment, Surinder Kaur and Sandeep Singh preferred an appeal against the findings recorded on issue No. 1, whereas Mohinder Singh has filed separate appeal, challenging the decree in question and Pritam Kaur filed cross objections under Order 41 Rule 22 C.P.C. The learned Additional District Judge, Chandigarh, vide judgment dated 1.6.2013, dismissed the appeal filed by the plaintiffs against the findings recorded on issue No. 1, whereas appeal filed by Mohinder Singh and cross objections filed by Pritam Kaur were allowed. It was held that the plaintiffs have failed to prove that they were put in possession on the part of the suit property, therefore, they are not entitled to recovery of possession. Accordingly, the judgment of the lower Court was reversed.

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Against the said judgment, Surinder Singh and Sandeep Singh (plaintiffs) have preferred RSA No. 1281 of 2014, RSA No. 1804 of 2014 and RSA No. 2440 of 2014, titled as Surinder Kaur and another Versus Mohinder Singh and others.

I have heard the learned counsel for the parties and have also carefully gone through the file.

The perusal of the pleadings shows that Surinder Kaur (plaintiff) claimed that Jagdish Kaur had executed an agreement to sell regarding half share in her favour on 27.8.1989. Before the lower Court, the said agreement was not proved. However, it is claimed that in the agreement, the possession of one half share has been delivered to the plaintiffs after getting the same vacated from U.P. State Handloom Corporation Limited. However, it has come on record that the ground floor of the said SCO, the possession of which is alleged to have been delivered to the plaintiffs through agreement to sell dated 27.8.1989, was infact in possession of tenant e.g. U.P. State Handloom Corporation Limited. The same was vacated in May, 1990, and the possession thereof was delivered to Jagdish Kaur (owner). The plaintiffs have proved a writing (Ex.PW5/1), executed by Jagdish Kaur. In the said writing, which is typed on a plain paper, it is stated that on 20th May, 1990, Jagdish Kaur daughter of Ajmer Singh, resident of 228, Bharat Nagar,

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Ludhiana, has delivered the vacant possession of half front portion of the ground floor of SCO No. 97, Sector-35-C, Chandigarh, to Surinder Kaur, after getting the possession vacated from the U.P. State Handloom Corporation Limited. In the said writing, reference has also been made to the agreement to sell dated 27.8.1989, executed between Jagdish Kaur on one hand and Surinder Kaur and Sandeep Singh, on the other hand. It was further mentioned that it is already mentioned in the agreement dated 27.8.1989 that since the possession could not be delivered after get it vacated from U.P. State Handloom Corporation Limited earlier, therefore, it has been delivered after taking possession from U.P. State Handloom Corporation Limited (tenant). Surprisingly, after the writing and signatures of Jagdish Kaur, there is following writing also :-

“This writing has been given by me Smt. Jagdish Kaur of my own, and nobody can object to it. I will not create any trouble at the time of execution of sale deed in favour of Smt. Surinder Kaur and his son.

Dated : 20th May, 1990. Sd/-
Jagdish Kaur.”

I am of the view that Jagdish Kaur had signed at two places as is done in the case of affidavit. If the possession was delivered on 20.5.1990, then, there was no need to execute the second portion reproduced above. It appears that the signatures of Jagdish Kaur were already existing at two places for the purpose of

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execution of some affidavit and in order to cover up the same, the later portion was written. Jagdish Kaur was not residing at 228, Bharat Nagar, Ludhiana, and rather she was a resident of Chandigarh. In the plaint itself, she is shown as resident of House No. 129, Sector-18-A, Chandigarh. Therefore, the findings of the first appellate Court, disbelieving the said writing, are fully supported by material on record. Therefore, it is doubtful that the plaintiff was delivered possession on 20.5.1990, as claimed by her.

It comes out that Jagdish Kaur died on 3.2.1992 and the suit was filed soon after her death i.e. on 5.3.1993. The plaintiffs claim that they were dis-posessed by Mohinder Singh etc. on 22.11.1992 by breaking open the lock, claiming agreement of sale in their favour. That would mean that plaintiffs remained in possession of the ground floor, earlier in possession of U.P. State Handloom Corporation Limited, from 25.5.1990 to 22.11.1992. However, no sewerage, water and electricity bills have been produced to show that the present plaintiff Surinder Kaur was entered as a tenant and she got the electricity and water connections etc. transferred in her name and paid the electricity and other bills herself. As a tenant, she was entitled to get the same transferred in her name. She has produced some bills from Public Health Department, U.T. Chandigarh, which stand in the name of

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Jagdish Kaur and which according to the plaintiff were handed over to her by Jagdish Kaur.

Learned senior counsel for the appellants has argued that the suit was filed under Section 6 of the Specific Relief Act within six months of the dispossession.

However, there is no mention in the plaint that the suit is being filed under the said section.

The averments were made that the plaintiff has been dispossessed on 22.12.1992 and the plaintiff has failed to prove that she was ever dispossessed on that date. She also failed to prove that she ever remained in possession thereof. Therefore, I am of the view that it was a regular suit for possession, for which the appeal was rightly filed before the learned Additional District Judge, Chandigarh.

Jassy Anand, Handwriting Expert, in her report (Ex.PW6) has opined that the signatures of Jagdish Kaur on writing dated 20.5.1990 (Ex.PW5/1) are forged signatures. Therefore, I agree with the view taken by the learned Additional District Judge, Chandigarh, that Surinder Kaur etc. have failed to prove that they were in possession of ground floor of the disputed SCO, vacated by U.P. State Handloom Corporation Limited and that they were dispossessed. Therefore, they are not entitled to possession thereof

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on the basis of previous possession. The recital in the agreement dated 27.8.1989 that the possession has been delivered is also found to be incorrect as according to the plaintiffs, the possession was delivered later on 20.5.1990. Therefore, on the basis of recital in the agreement, the plaintiff cannot get back the possession, unless her suit for specific performance is decreed.

In view of the foregoing discussion, I find that there is no illegality or infirmity in the findings recorded by both the Courts below. Hence, all the three regular second appeals filed against the said impugned orders are dismissed. However, it is made clear that the LRs of deceased Jagdish Kaur were brought on record only to represent her in this case and this judgment shall not be taken to be a final verdict as to who is to inherit the property of Jagdish Kaur.

(KULDIP SINGH)
JUDGE

25.4.2016
sjks