

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 65 of 2016 (O&M)
Date of Decision : 01.12.2016

Santokh Singh and others

....Appellants

Versus

Dildar Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arun Jain, Senior Advocate with
Mr. Kushagra Mahajan, Advocate
for the appellants.

Mr. Premjit Kalia, Advocate
for the respondents.

Surinder Gupta, J.

This is appeal against concurrent judgments of Courts below decreeing the suit of plaintiffs for possession of land measuring 40 *kanals* 13 *marlas* situated in village Bhaggupur Bet, *Tehsil* Ajnala, District Amritsar, as fully described in headnote of the plaint.

2. Case of plaintiffs, in brief, is that suit land was owned by Punjab State and was allotted to Bela Singh son of Maghar Singh, father of plaintiffs no. 1 to 4, defendants no. 5 and 6 and husband of Sant Kaur-plaintiff no. 5, who had served the Indian Army in the 2nd World War. A regular certificate of allotment no. 38 was issued in the name of Bela Singh by *Tehsildar*, Ajnala. Bela Singh had died and after his death plaintiffs and defendants no. 4 and 5 have become owner of the suit land. Plaintiffs have alleged that defendants no. 1 to 4 were inducted as tenant in the suit land by Bela Singh on '*Batai Nisafi Paidawar, Gair Maroosi Dom*' in the year 1993-94 but they did not pay rent to plaintiffs despite notice. They were asked to vacate and hand over possession of suit land but in vain. A petition was

filed before Sub Divisional Officer (C), Ajnala for ejectment of defendants no. 1 to 4 wherein they appeared and denied the relationship of landlord and tenant between the parties. They claimed their possession over suit land as prospective vendees under agreement to sell dated 02.06.1983. Despite opportunities given to them to produce original agreement, the same was not produced before the SDO (C), Ajnala. As defendants no. 1 to 4 have denied the relationship of landlord and tenant between the parties, therefore, they are liable to deliver possession of the suit land for which instant suit was filed.

3. In written statement, defendants no. 1 to 4 contested claim of plaintiffs *inter alia* pleading that plaintiffs have no *locus standi* to file the present suit and have no right, title or interest in the suit land. It was also pleaded that Bela Singh died issueless and widow-less, as such, plaintiffs are not his legal heirs. The suit is barred under Section 53-A of the Transfer of Property Act (later referred to as 'the Act'). Bela Singh entered into agreement to sell the suit land in favour of defendants no. 1 to 4 on 02.06.1983 for sale consideration of ₹60,000/- out of which he received ₹40,000/- as earnest money and delivered possession to them. Sale deed was to be executed within two months from the date of confirmation of allotment and sanctioning of mutation of ownership in favour of Bela Singh, which till today has not been sanctioned. The relationship of landlord and tenant between the parties was denied and it was alleged that defendants no. 1 to 4 are not under any liability to pay rent or share of produce to plaintiffs-appellants.

4. Defendants no. 5 and 6 filed written statement admitting claim of plaintiffs.

5. Plaintiffs reasserted their case in replication and the plea of defendants no. 1 to 4 that Bela Singh vide agreement dated 02.06.1983 had agreed to sell the suit land to them for a sum of ₹60,000/- and received ₹40,000/- as earnest money, was contested, controverted and denied.

6. Pleadings of parties led to framing of the issues as follows:-

- (i) Whether the suit land was allotted to Bela Singh son of Maghar Singh? OPP
- (ii) Whether plaintiffs and defendants no. 5 and 6 are legal heirs of Bela Singh? OPP
- (iii) Whether plaintiffs are owners of the suit land? OPP
- (iv) Whether defendants no. 1 to 4 were inducted as tenants in the suit land by Bela Singh? OPP
- (v) Whether the plaintiffs are entitled for possession of the suit land? OPP
- (vi) Whether the plaintiffs have no *locus standi* to file the present suit? OPD
- (vii) Whether plaintiffs have no cause of action to file the present suit? OPD
- (viii) Whether the suit is within limitation? OPD
- (ix) Whether the suit is barred under Section 53-A of Transfer of Property Act? OPD
- (x) Whether plaintiffs are estopped by their own act and conduct from filing the present suit? OPD
- (xi) Relief.

7. Learned Civil Judge (Junior Division), Ajnala while recording finding on issues no. 1 to 5 observed that suit land was allotted to Bela

Singh vide regular certificate of allotment no. 38. After death of Bela Singh, plaintiffs have become landlord of suit land qua defendants no. 1 to 4, who were inducted as tenants by said Bela Singh on '*Batai Nisafi Paidawar*', *Gair Maroosi Dom* in the year 1993-94. **Possession of defendants no. 1 to 4 over suit land was as tenants.** Plaintiffs, who have better title than defendants, are entitled to possession of suit land. Finding on issues no. 6 to 8 were recorded in favour of plaintiffs and on the plea of defendants no.1 to 4 that they are in possession of suit land as prospective vendees, it was observed in para 25 of the judgment as follows:-

“25. As per law two main ingredients are to be proved regarding delivery of possession and that whether prospective vendees are already in the possession. The perusal of agreement Ex. D-1 shows that there is no recital of delivery of possession nor there is any recital that defendants are already in the possession. In the absence of both the pleas, the plea of Section 53-A of the Transfer of Property Act is not available to the defendants. Hence, this issue is decided against the defendants and in favour of the plaintiffs.”

8. Not satisfied, defendants no. 1 to 4 filed appeal before Additional District Judge, Amritsar, which was dismissed with observation that defendants no.1 to 4 have failed to prove execution of agreement dated 02.06.1983 by Bela Singh in their favour. On the point of maintainability of suit, Ist Appellate Court relied on observations of this Court in case of **Heman and another vs. Tulsi Ram (died) represented by L.Rs, 1984**

R.R.R.607, wherein it has been observed as follows:-

“It was next contended that in any case if the defendants are held to be the tenants then the Civil Court has no jurisdiction to pass a decree. This argument is misconceived. When the plaintiffs approached the revenue authorities under the Punjab Security of Land Tenures Act an objection was taken on behalf of the defendants that they are not the tenants and as a result of that, the plaintiffs were directed to file a Civil suit. Now in the Civil suit the plea taken by the defendants in the written statement is that they are the owners and not the tenants. It is on the basis of these facts on the record that it has been found that the defendants were allowed to enter the suit land as tenants, and, therefore, they have not become owners at any stage. In view of these findings it cannot be said that the defendants can now urge that the Civil Court has no jurisdiction to pass a decree because they have been found to be the tenants on this land. Once the tenants deny the title of the landlord, they become trespassers on the suit land and are, therefore, liable to eviction therefrom.”

9. Learned Ist Appellate Court observed that Civil Court has got jurisdiction to pass a decree for possession if the tenant denies the title of landlord.

10. I have heard learned counsel for parties and perused the paper-book and lower Court record with their assistance.

11. During course of arguments, learned counsel for appellants has mainly stressed on the issue that possession of appellants over suit land is under agreement dated 02.06.1983 and is protected under Section 53-A of

the Act. He has argued that Bela Singh died on 18.12.1988, as such, this plea of plaintiffs that land was given to appellants as tenants in the year 1993-94 by Bela Singh has no basis. It is proved from entries in revenue record that appellants were inducted in possession of suit land in the year 1983 and these entries were neither challenged by Bela Singh or by plaintiffs at any point of time. Both the Courts below have ignored entries in *jamabandi* for the year 1983 onward recording possession of appellant over suit property. Both marginal witnesses of agreement dated 02.06.1983 have died. Defendant-Santokh Singh, who is signatory of agreement appeared as DW-1 and deposed that it was executed by Bela Singh. His statement is un-rebutted and suffice to prove that agreement was executed by Bela Singh. Out of total consideration of ₹60,000/- a substantial part i.e. ₹40,000/- was paid as earnest money. In such transaction no prudent man will pay 2/3rd of sale consideration at the time of agreement without delivery of possession to him. Even if this fact is not mentioned in agreement, it is proved from evidence on file that the defendants/appellants were inducted in possession immediately after execution of agreement.

12. Learned counsel for respondents has argued that agreement dated 02.06.1983 was not duly proved. No marginal witness of this agreement was examined. Scribe of agreement Malook Singh has stated that he was not knowing Bela Singh personally. Report of the expert examined by respondents that signatures of Gurdial Singh on the agreement do not tally with his standard signatures is un-rebutted and no evidence to rebut the testimony of expert was produced by appellants. Protection under Section 53-A of the Act is available only when possession is delivered under the agreement while in this case it is not proved that possession was

given to appellants under the agreement. Appellants have failed to prove ingredients of Section 53-A of the Act to have protection of the same. He has further argued that Bela Singh was a literate person while the agreement bears his thumb impression. There is no explanation as to why Bela Singh put thumb impression on the agreement. Concurrent findings of Courts below are based on facts and evidence on record and call for no interference in second appeal.

13. Following substantial questions of law arise for consideration in this appeal :-

- (i) As to whether Courts below while recording findings with regard to execution of the agreement and claim of defendants that their possession is protected under Section 53-A of the Transfer of Property Act, have ignored documentary and vital evidence on record?
- (ii) Whether execution of agreement dated 02.06.1983 by Bela Singh is duly proved and possession of appellants over suit land is protected under Section 53-A of the Transfer of Property Act?

14. The entire claim of defendants-appellants is based on agreement dated 02.06.1983 (Ex. D-1). It was scribed by Malook Singh, Deed Writer, Ajnala, thumb marked by Bela Singh vendor, Santokh Singh as one of the vendees and Niranjana Singh as marginal witness while Gurdial Singh, marginal witness, signed the agreement. Learned Civil Judge (Junior Division), Ajnala though, discussed the evidence produced by appellants to prove execution of agreement dated 02.06.1983, yet failed to record any specific finding in this regard. Ist Appellate Court on appraisal of evidence

observed that execution of the agreement (Ex. D-1) is not duly proved, as such, protection of Section 53-A of the Act is not available to appellants. It will be appropriate and relevant to have a look at the observations by Ist Appellate Court in paras 25 and 26 to this effect, which are reproduced as follows:-

“25. The argument of learned Counsel for appellants is that Bela Singh executed an agreement of sale in favour of appellants and since then they have been in possession of the suit property. The respondents on the other hand denied the execution of the agreement. The onus to prove this agreement was on the appellants. No attesting witness of the agreement has been examined by the appellants. Even the legal heirs of either of the attesting witnesses has not been examined who could identify the signatures of the attesting witnesses. Though appellants examined DW2 Kashmir Singh to prove that he was a witness to the agreement but the agreement does not bear his thumb impression or signatures. In his cross-examination, he has also stated that he was the alone attesting witness of the agreement. Meaning thereby there was no other attesting witness to the agreement. The respondents on the other hand examined handwriting expert Dr. Vikram Raj Singh Chauhan, who has proved his report as Ex.PW9/1, photographs as Ex.PW9/2 to Ex.PW9/5 and negatives as Ex.PW9/6 to Ex.PW9/9 to prove that the disputed signatures of

Gurdial Singh on agreement Ex.D1 does not tally with the standard signatures of Gurdial Singh on the registered Will dated 05.02.1992 Ex.P13. There is nothing in the cross-examination of handwriting expert to doubt the genuineness of his report. No rebuttal evidence has been led by the appellants to prove that the dispute thumb impression of Gurdial Singh tallied with his standard thumb impression.

26. *The next arguments of learned counsel for the appellants is that DW3 Malook Singh scribe of the agreement of sale has proved due execution of the agreement. This arguments of learned counsel for the appellants has also not impressed me in view of the fact that DW3 Malook Singh himself stated in his cross-examination that he was not personally known to the parties. As such, he cannot be said to be the attesting witness. More-so, it is the specific case of the respondents that Bela Singh was a literate man and he used to put his signature on the documents. Therefore, it is clear that appellants have failed to prove the execution of the agreement in their favour. Once the agreement has not been proved on the record, the appellants cannot be held to be in possession on the basis of agreement Ex.D1. Therefore, their possession cannot be said to be under section 53-A of the Transfer of Property Act and the plea of section 53-A of Transfer of Property Act, is not helpful to the*

appellants.”

15. Before proceeding further it will be appropriate to take note of argument by learned counsel for respondents that in regular second appeal this Court cannot reassess the evidence to arrive at a different conclusion. He has relied on observations of Apex Court in cases of **Thimmaiah vs. Ningamma, 2000 (9) SCC 453**, **Laxmidevamma and others vs. Ranganath and others, 2015 (2) SCC (Civil) 575** and **Narayanan Rajendran and another vs. Lekshmy Sarojini and others, 2009 (5) SCC 264**.

16. Legal proposition is not disputed that this Court has not to interfere finding of fact except when Courts below recording the findings, have committed grave error and have ignored vital and material evidence on record, misread the same and conclusion drawn are perverse and against the facts. In case **Hero Vinoth (minor) vs. Seshammal, 2006 (5) SCC 545**, Apex Court while discussing the scope of interference in concurrent finding of fact in second appeal and scope of Section 100 CPC observed as follows:-

“25. The principles relating to Section 100 CPC, relevant for this case, may be summarized thus:-

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a

document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or

acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

17. Keeping in view the above settled proposition of law in ***Hero Vinoth's case (supra)***, I proceed further to appreciate the evidence on record.

18. With the assistance of learned counsel for parties I have perused the evidence produced by plaintiffs-respondents to prove the agreement (Ex. D-1). As already discussed, this agreement was thumb marked by Bela Singh owner of the land and Santokh Singh, one of the vendee. It was attested by Gurdial Singh and Niranjana Singh as marginal witnesses. Santokh Singh appeared as DW-1 and stated that Bela Singh entered into agreement to sell land in dispute for a total consideration of ₹60,000/- and received ₹40,000/- as part payment. He also executed agreement dated 02.06.1983, which was scribed by Malook Singh, Deed Writer, who read over and explained the same to Bela Singh and after admitting the same as correct and on receipt of ₹40,000/- Bela Singh thumb marked the agreement. He also thumb marked the agreement. **In his entire cross-examination, statement of Santokh Singh to this effect has gone un-rebutted. Even in cross-examination, he has reiterated that**

possession of suit land was delivered at the time of execution of the agreement. He was not suggested in cross-examination that agreement did not bear his thumb impression and of Bela Singh. It was also nowhere suggested that appellants were inducted as tenants over the suit land by Bela Singh in the year 1993. Statement of Santokh Singh finds corroboration from testimony of Malook Singh, scribe of the agreement. His statement is relevant to the extent that consideration of ₹40,000/- out of the total consideration of ₹60,000/- was paid in his presence at the time of execution of the agreement. He read over and explained the agreement to Bela Singh and Santokh Singh, who after admitting the same as correct thumb marked it and he made entry of agreement in his register at serial no. 257 dated 02.06.1983, which he maintains in the ordinary course of deed writing business. Even in cross-examination, he has stated that ₹40,000/- as earnest money was paid in his presence. Statement of this witness is also un-rebutted in cross-examination with regard to facts as stated by him in his examination-in-chief regarding putting of thumb impression by vendor and vendee over agreement. The mere fact that he was not knowing the parties personally is no ground to outrightly discard his statement. It is to be read alongwith statement of Santokh Singh, who was also present at the time of execution of the agreement (Ex. D-1). Both the marginal witnesses of the agreement are no more in this world to testify regarding execution of the agreement. Ist Appellate Court while discarding the agreement has taken note of the fact that no attesting witness has been examined, ignoring the fact that when none of the attesting witness is alive, they could not be examined. It is not the requirement under law to examine legal heirs of either of the marginal

witness of an agreement to identify his signatures or thumb impression. Agreement is not required to be proved like a Will or a registered deed of conveyance. The agreement bear thumb impression of marginal witness Niranjana Singh, which cannot be identified by any person as such examination of his legal heir would not have served any purpose.

19. Much emphasis has been put on the fact that Bela Singh was literate and used to sign, as such, there was no reason for him to put his thumb impression on agreement dated 02.06.1983. The above argument of learned counsel for the respondent has no merit in facts and circumstances of this case. Admittedly, Bela Singh was serving in Army and was discharged from Army in the year 1946. On the document relating to his discharge he had appended his signatures. He died in the year 1988 and was 70 years of age at that time, which means that he was 64/65 years of age at the time of agreement and was an old man. It is quite possible that being an old man Bela Singh had felt comfortable in putting his thumb impression than to sign. In this age, a person develops many health related problems. Weakness of eye-sight or trembling hands may be a reason for a person aged 64/65 years to feel comfortable in putting thumb impression than to sign. Though, there is no evidence regarding health problem of Bela Singh on record but this fact is proved that he had executed the agreement and possession was changed in the revenue record in favour of appellants. Bela Singh never challenged change of entries in the revenue record during his life time. Keeping in view above facts, putting of thumb impression on agreement dated 02.06.1983 by Bela Singh cannot be taken as a circumstance to term the same as forged one.

20. Plaintiffs-respondents examined Vikramraj Singh Chauhan,

handwriting and fingerprint expert as PW-9 to compare signatures of Gurdial Singh on the agreement with his signatures on the Will (Ex. P-13) executed by him and gave report that both the signatures do not talley and signatures of Gurdial Singh on agreement (Ex. D-1) are forged and fabricated.

21. While learned Civil Judge (Junior Division), Ajnala did not give any prominence to the report of handwriting expert, Ist Appellate Court placed reliance on this report and observed that from the report of handwriting expert, it is proved that signatures of Gurdial Singh on the agreement do not talley with his standard signatures, which were taken from Will dated 05.02.1992. On perusal of report supported by photographic chart, I find that signatures of Gurdial Singh in Urdu script on Will dated 05.02.1992 were taken as his specimen signatures. He appended signatures on the Will at three places 'S1' to 'S3'. Photographic chart of these three signatures shows number of dissimilarities in signatures 'S2', 'S3' on one side and 'S1' on other side. The reason is quite obvious. While writing two signatures, the change takes place because of manner of writing, mood of writer and place of writing. If specimen signatures are not similar, its comparison with signatures on a document written nine years prior has no meaning. In case, an expert has to give report, he can give so many points of differences in specimen signatures of Gurdial Singh, which were appended on the Will on the same day. The pen-lift and pauses shown in questioned signature have been ignored in the specimen signatures. If there are differences in manner of writing specimen Urdu signatures appended on the same day, there is bound to be differences in Urdu signature on its comparison with the specimen signature, which were appended nine years

later.

22. Handwriting is not a perfect science. Report of the expert is for the assistance of Court and is not to be blindly followed. The Court has to be very careful while examining the report of handwriting expert particularly when the expert has been engaged and paid by a party as they have tendency to support their paymaster. In this case, reasons given by the expert while reaching the conclusion that signatures of Gurdial Singh differ with his specimen signatures on the Will if taken on face value and critically applied to specimen signatures of Gurdial Singh on the Will, are enough to draw conclusion that specimen signatures 'S1', 'S2' and 'S3' as shown in photographs Ex. PW-9/2, PW-9/4 and PW-9/5, were also not appended by the same person. Difference in signatures is natural phenomena. Sometimes a person takes more space of page while appending his signatures while sometimes the same are squeezed in narrow space. It all depends upon the time, mood and circumstances in which signatures are appended. We usually find that signatures appended when a person is in hurry and signatures appended when he is sitting cool and calm, have many points of variation. This is particularly so when signatures are appended in Urdu language as signatures on the Will of Gurdial Singh, which were appended on the same day before the scribe and before the Sub-Registrar find variation. Here I am fully cautious of the fact that as a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signatures with that of the admitted signatures or handwriting and in the event of the slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has no power to compare the disputed signatures with the admitted

signatures as this power is clearly available under Section 73 of the Evidence Act. In this case, bare perusal of signatures of Gurdial Singh on the agreement and its comparison with alleged specimen signatures 'S1', 'S2' and 'S3' show more points of similarities in the mannerism of writing than the point of differences.

23. Learned Ist Appellate Court, while relying on report of handwriting expert, has not tried to look into the fact that signatures of Gurdial Singh on the agreement were appended on 02.06.1983 while the Will is dated 05.02.1992. There was a time gap of about nine years in execution of the agreement and the Will. Perusal of signatures on the agreement and the Will show that there is no variation in the mannerism of writing the signatures on the agreement and the Will (Ex. P-13). I have also seen and examined signatures of *Numberdar* Harcharan Singh, who also signed the Will as marginal witness. His signatures on the first page of the Will and on the endorsement are having a number of different characteristics in mannerism of writing despite the fact that these two signatures were appended on the same day, which confirm my view that signatures of a person appended at two different point of time may differ. In cross-examination, handwriting expert was shown signatures of Gurdial Singh, which were appended by him on 03.05.1968 on a mortgage deed executed by one Mangal Singh of village Lopoke but he could not comment on these signatures on the ground that he has not compared the same. Signatures of Gurdial Singh appended in the year 1968 though tally in the mannerism of writing signatures on agreement but have many dissimilarities even with his signatures appended on the Will. On careful perusal of these signatures, I am of the considered opinion that Courts below have not

critically examined report of handwriting expert and document on record and have erred in reaching the conclusion that signatures of Gurdial Singh on the agreement and Will dated 05.02.1992 do not tally. Characteristics, mannerism, specific features and style of signatures of Gurdial Singh on agreement dated 02.06.1983 and other documents are almost similar. For the reasons discussed above, I do not find the report of handwriting expert examined by plaintiffs-respondents reliable. This report also reflects the tendency that handwriting experts help their paymaster, who have engaged them. Appellants had no reason to forge signatures of Gurdial Singh in the year 1983. At that time they could get signatures of any person on the agreement instead of forging signatures of Gurdial Singh. Further authenticity of the agreement is reflected from the fact that possession of suit land was delivered to appellants immediately after the agreement and the same was reflected in the revenue record. While discarding agreement dated 02.06.1983, reasoning recorded by the Ist Appellate Court are not based on proper appreciation of evidence on record. Rather some vital evidence oral as well as documentary has been ignored and bypassed. On appraisal of evidence on record, I find that only conclusion, which can be safely drawn is that the agreement is duly proved. Statement of Santokh Singh, who is party to the agreement and in whose presence the agreement was executed, supported by testimony of deed writer coupled with delivery of possession, prove execution of the agreement by Bela Singh, to sell the suit land to appellants vide agreement (Ex. D-1) and receipt of sale consideration of ₹40,000/-. Reasoning recorded by Ist Appellate Court while discarding agreement dated 02.06.1983 is not based on evidence on record, rather very vital evidence, oral as well as documentary, has been

ignored and bypassed.

24. Next and very important question relating to proof of execution of agreement dated 02.06.1983, which arises for consideration is **“as to whether possession of the suit property was delivered to appellants under the agreement (Ex. D-1) so as to attract the provisions of Section 53-A of the Transfer of Property Act?”**

25. On this point learned trial Court observed that defendants no.1 to 4 were inducted as tenants in the suit land by Bela Singh. Ist Appellate Court did not answer this question but observed that the agreement is not proved, as such, possession of appellants is not protected under Section 53-A of the Act. About the maintainability of suit, it observed that Civil Court has jurisdiction in the matter as appellants have denied the relationship of landlord and tenant between the parties. Both the Courts have skipped a very vital question which arises in this case about the status of possession of appellants over the suit land and when they were inducted in possession.

26. As per averments of plaintiffs-respondent in para 3 of the plaint, appellants were inducted as tenants in the suit land by Bela Singh in the year 1993-94. Though, defendants disputed this fact in the written statement and asserted their possession on the basis of agreement dated 02.06.1983 yet the plaintiffs reiterated in replication that possession was delivered as per their averments in plaint.

27. While appearing as PW-1 Surjit Singh-plaintiff affirmed plaintiffs' plea that defendants were inducted as tenants in the suit land by Bela Singh on '*Batai Nisafi Paidawar Gair Maroosi Dom*' in the year 1993-94. About the agreement (Ex. D-1), he denied knowledge as to whether it was executed by Bela Singh on 02.06.1983 on receipt of ₹40,000/- as

earnest money. PW-2 Kartar Singh has also deposed that Bela Singh inducted appellants as tenant in the year 1993-94. To similar effect is the statement of PW-3 Sukha Singh, PW-4 Darshan Singh and PW-5 Gurnam Singh. **Admittedly, Bela Singh had died on 18.12.1988. To this effect plaintiffs themselves have relied on his death certificate (Ex. P-22), which clearly states date of death of Bela Singh son of Maghar Singh as 18.12.1988. It is nowhere the case of plaintiffs that they have inducted defendants no.1 to 4 (appellants) as tenants in the suit land.** The plea and evidence of plaintiffs, thus utterly fail and get defeated by their own evidence. Revenue record on file further destroys their averments that Bela Singh inducted appellants as tenants in suit land. Ex. P-1 *jamabandi* for the year 1970-71 and Ex. P-2 *jamabandi* for the year 1975-76 show suit land in possession of Bela Singh. However, in the *jamabandi* for the year 1980-81 suit land is shown to be in possession of Karnail Singh son of Kesar Singh as *Gair Maroosi Dom* and Amarjit Singh son of Gurnam Singh as *Gair Maroosi Dom*. With regard to land in possession of Karnail Singh, column no. 9 of *jamabandi* states that he was in possession of 3 *kanals* 7 *marlas* of land on payment of half of the crop as rent while Amarjit Singh is recorded as owner of land measuring 14 *kanals* 4 *marlas* bearing *khasra* nos. 23/3 and 23/4 on payment of ₹200/- per acre as lease money while remaining land measuring 23 *kanals* 2 *marlas* bearing *khasra* no. 23/5, 23/6 and 23/7 was mentioned in possession of Amarjit Singh son of Gurnam Singh on payment of 50% share of produce.

28. **However, the entries in *jamabandi* changed after agreement dated 02.06.1983 and as per *jamabandi* for the year 1985-86, entry of possession of land measuring 3 *kanals* 7 *marlas* in favour of Karnail**

Singh was repeated as per previous entry, however, possession of land measuring 14 *kanals* 4 *marlas* and 23 *kanals* 2 *marlas* was recorded to be that of appellants as *Gair Maroosi Doyam*. In column no. 9, pertaining to the land measuring 14 *kanals* 4 *marlas* bearing *khasra* no. 23/3 and 23/4, appellants were recorded as in illegal possession while regarding the remaining land measuring 23 *kanals* 2 *marlas* their possession was recorded as *Gair Maroosi Dom* on payment of half share of produce/*tasabar beh* i.e. in view of sale. Similar entry continued in the *jamabandi* for the year 1985-86. In the *jamabandi* for the year 1990-91, entry of possession continued in favour of appellants but in column no. 9 with regard to entries of land measuring 23 *kanals* 2 *marlas* the land was shown as in possession of plaintiffs because of purchase by them. In the *jamabandi* for the year 1995-96 onward, entire suit land was shown in possession of appellants and entry regarding possession of Karnail Singh with regard to land measuring 3 *kanals* 7 *marlas* was omitted. The above evidence clearly show that possession of appellants over suit land was recorded in the next *jamabandi* prepared after 02.06.1983. Similar entries were reflected in *khasra girdawari* for the crop of the year 1985-86. Plaintiffs-respondents or Bela Singh, during his life time have never challenged the above entries in the revenue record at any point of time. Both the Courts below have ignored this vital piece of evidence and the fact that Bela Singh had died on 18.12.1988 and the plea of plaintiffs-respondents that suit land was given by him in the year 1993-94 to appellants as tenant, has no basis.

29. As per agreement, Bela Singh had received ₹40,000/- out of total sale consideration of ₹60,000/- and had agreed to get the sale deed

executed within two months of confirmation of allotment of suit land in his favour and sanctioning of mutation. Though, this fact is not specifically mentioned in the agreement that possession of suit land was delivered to appellants but it is proved from entries in the revenue record and un-rebutted testimony of Santokh Singh. Even otherwise in the year 1983, amount of ₹40,000/- was a very big amount and it cannot be expected that a person, who is paying such a huge amount and major portion of total sale consideration, will not take possession of suit land agreed to be sold. Requirement of Section 53-A of the Act is to prove that proposed vendee has taken possession and not that delivery of possession find mention in agreement.

30. The next question of law, which confronts this Court and calls for determination in this appeal is **“as to whether protection of Section 53-A of the Act is available to appellants?”**

31. Before proceeding further it will be relevant to note the provisions of Section 53-A of the Act, which reads as follows:-

“53A.Part performance - Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has

performed or is willing to perform his part of the contract, then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

PROVIDED that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

32. Learned counsel for plaintiffs-respondents has relied on observations of Apex Court in case of **FGP Ltd. vs. Saleh Hooseini Doctor and another, 2009 (10) SCC 223**, wherein ingredients of Section 53-A of the Act were laid down as follows:-

“26. Section 53-A of the Transfer of Property Act has certain ingredients and, in our judgment, those are:-

- (1) a contract to transfer immovable property;
- (2) the transfer should be for consideration;
- (3) the contract must be in writing;

- (4) it should be signed by or on behalf of the transferor;
- (5) the terms of the contract can be ascertained with reasonable certainty from the writing;
- (6) the transferee takes possession of the whole or part of the property or if already in possession continues in possession;
- (7) such taking of or continuance in possession should be in part performance of the contract;
- (8) the transferee should do some act in furtherance of the contract; and
- (9) he should have performed, or be willing to perform, his part of the contract.”

33. As per agreement, allotment of suit land to Bela Singh had not been confirmed. He undertook to execute the sale deed within two months of confirmation of the allotment and sanctioning of mutation in his name regarding which he will inform the vendees. There is no pleading or evidence that Bela Singh and after his death, plaintiffs have ever intimated defendants-appellants that allotment has been confirmed in favour of Bela Singh and mutation has also been sanctioned so that they may be called upon to execute their part of the agreement. It is proved on file that there was contract in writing to transfer immovable property for consideration, which was signed by transferor. All the ingredients as mentioned in citation referred by learned counsel for respondents are duly fulfilled and possession of appellants over suit land is duly protected under Section 53-A of the Act.

Findings of Courts below on issue no. 9 specifically and on other issues are

reversed so far as these were recorded against appellants.

34. In view of my discussion above, findings recorded by both the Courts below are against facts on record, perverse and were recorded by ignoring material evidence on record, as such, are liable to be set aside. Substantial questions of law, framed in this appeal, are decided in favour of defendants-appellants and against plaintiffs-respondents. Consequently, this appeal has merits and the same is accepted. The suit of plaintiffs is dismissed.

December 01, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No