

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

**R.S.A No.3660 of 2014 (O&M)  
Date of decision :26.02.2016**

**Raj Pal**

**..... Appellant**

**Versus**

**The Pahari Co-operative Credit & Sevice Society Ltd. and others**

**..... Respondents**

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr.Surinder Dagar, Advocate  
for the appellant.

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**DARSHAN SINGH,J**

The present appeal has been preferred by appellant/defendant no.3 against the judgment and decree dated 07.02.2014 passed by the learned Additional District Judge, Gurgaon, vide which the appeal preferred against the judgment and decree dated 29.01.2010 passed by the learned Additional Civil Judge (Sr. Division), Gurgaon has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The respondent-plaintiff, The Pahari Co-operative Credit & Service Society Ltd. (hereinafter called the 'plaintiff society') filed the suit for declaration that the plaintiff society is owner in possession of the plot

measuring 1 Kanal 7 Marlas situated at village Pahari, Tehsil Pataudi, District Gurgaon, which was purchased by the plaintiff society from the defendants through registered sale deed dated 17.05.1972. The Revenue Officer did not enter the mutation of the sale deed in favour of the plaintiff society. As such, name of the defendants still exists in revenue record. Taking the benefit of these wrong entries, defendants are threatening to interfere in the possession of the plaintiff society over the plot in dispute, which are against factual position. It is further prayed that the sale deed is liable to be corrected showing the correct rect. No. as 73 instead of rect. No.77.

4. Appellant and respondents no. 1 to 6 contested the suit by filing the joint written statement alleging therein that they never sold the plot in dispute to the plaintiff society through registered sale deed dated 17.05.1972. The said sale deed is fictitious and *void ab initio*. The defendants are owners in possession of the plot in dispute. They further raised the alternative plea that their possession over the plot in dispute is open, hostile and they had perfected their title over the plot in dispute by way of adverse possession. Thus, they pleaded that the plaintiff society has no right, title or interest in the plot in dispute.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court on 27.11.2000:-

1. Whether the plaintiff is owner in possession of the suit property mentioned in para no. 2 of the plaint?OPP
2. Whether the plaintiff is entitled for injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable in the

present form?OPD

4. Whether the plaintiff has no cause of action to file the present suit?OPD
5. Whether the plaintiff has not come to the court with clean hands, if so, to what effect?OPD
6. Whether the suit is barred under Section 41(h) of the Specific Relief Act?OPD
7. Relief.

6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit of the plaintiff society. The plaintiff society was held to be lawful owner in possession of the plot in dispute and the defendants were restrained from interfering in the peaceful possession of the plaintiff society over the plot in dispute.

7. Aggrieved with the aforesaid judgment and decree, appellant-defendant no.3, defendant no.1 (since deceased through his Lrs) and defendant no.2 preferred the appeal and the same was dismissed by the learned Additional District Judge, Gurgaon vide impugned judgment and decree dated 07.02.2014. Hence this Regular Second Appeal.

8. I have heard Mr. Surinder Dagar, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellant contended that the appellant and respondents no. 2 to 6 had never sold the plot in dispute to the plaintiff society. The sale deed dated 17.05.1972 is fictitious, without consideration and *void ab initio*. The name of appellant and his co-defendants still exists in the revenue record. He further contended that the plaintiff society has no title to the suit plot as no

mutation was sanctioned on the basis of alleged sale deed in favour of the plaintiff society. He further contended that the appellant and respondents no.2 to 6 are in peaceful possession of the plot in dispute. There is no material to show the possession of the plaintiff society over the plot in dispute. Thus, he contended that learned trial Court has wrongly decreed the suit. The learned First Appellate Court has also dismissed the appeal without taking into consideration the factual and the legal position.

10. I have duly considered the aforesaid contentions.

11. The plaintiff society is claiming itself to be the owner in possession of the plot in dispute on the basis of the sale deed dated 17.05.1972, whereas, the appellant and his co-defendants have alleged that the said sale deed is fictitious, without consideration and *void ab initio* and they are still owners in possession of the disputed plot. They have also raised the plea of adverse possession.

12. The appellant and his co-defendants have not been able to establish the plea raised by them that the sale deed is fictitious, without consideration and *void ab initio*. Respondent no. 6-Prabhu Dayal has stepped into the witness box as DW-2. In his affidavit Ex.DW2/A, he has introduced a total new story that their signatures were obtained by Mangal and Hazari Lal on some blank papers in the year 1972, when they took loan of Rs. 1200/- from the plaintiff society. This affidavit filed by Prabhu Dayal shows that they have impliedly admitted their signatures/thumb impression on the sale deed in question. So, the burden had shifted upon the appellant and his co-defendants to explain under what circumstances their signatures/thumb impressions came on the sale

deed dated 17.05.1972. But, the explanation given by DW-2-Prabhu Dayal that their signatures were obtained on blank stamp papers when they obtained loan from the plaintiff society, is totally beyond pleadings. It is settled principle of law that evidence beyond pleadings cannot be looked into. Thus, the appellant and his co-defendants have not been able to explain their signatures/thumb impressions on the sale deed and consequently they failed to prove that the sale deed dated 17.05.1972 is fictitious, without consideration and *void ab initio*.

13. In order to prove the sale deed dated 17.05.1972, the plaintiff society has examined PW-1 Bishamber Dayal, who is son of Mangal, the attesting witness of the Will. The plaintiff society has also examined PW-2 Babu Lal, the son of another attesting witness of the sale deed namely Hira Lal. PW-3-Prem Lata, Clerk in the office of Registrar, Gurgaon has proved the copy of sale deed Ex.PW-3/A. In order to establish the signatures/thumb impression of the appellant and his co-defendants on the sale deed, the plaintiff society has examined PW-4 Parveen Pahuja, hand writing and finger print expert. He has proved his report Ex.P-4/1 wherein he has given the opinion that the said sale deed bears the signatures of defendants Lala Ram and Rajpal and thumb impression of Prabhu Dayal, the executants of the sale deed. Thus, from the aforesaid evidence, there remains no doubt that appellant-Rajpal and his co-defendants Prabhu Dayal and Lala Ram (deceased) were the executants of the sale deed dated 17.05.1972 for the sale of plot in dispute for a sale consideration of Rs. 1500/- to the plaintiff society and the possession of plot in dispute was also handed over to the plaintiff society by virtue of

the aforesaid sale deed.

14. There appears to be a clerical and inadvertent mistake in the sale deed with respect to the rectangle number of the plot in dispute. The learned First Appellate court has observed that jamabandi Ex.P-1 for the year 1967-68 shows Umrao as the owner in possession of the land comprised of rect. No. 73 (0-7) and rect. No.103 (1-0). Umrao was the father of the defendants. Learned First Appellate Court further mentioned that the copy of jamabandi Ex.P-2 shows the defendants to be owner in joint possession of rect. No. 73 (0-7) and rect. No. 103 (1-0). No evidence has been adduced by the appellant and his co-defendants to prove that they were also the owner of the land comprised of rect. No. 77 and they had sold that land to the plaintiff society instead of the land comprised of rect. No.73. So, when appellant and his co-defendants were not the owner of rect. No. 77, there was no question of their selling the land comprised of rect. No.77. Thus, rect. No. 77 has been written due to inadvertent clerical mistake on the part of the scribe of the sale deed, which certainly requires correction.

15. The appellant and his co-defendants have also raised the plea of adverse possession. On the one hand, they are alleging themselves to be the owners of the plot in dispute and on the other hand they alleged that they have perfected their title by way of adverse possession. Both these pleas are self contradictory. It is settled principle of law that where the plea of adverse possession is raised, the ownership/title of the opposite party is impliedly admitted. To support this view, reference can be made to cases **Karnataka Board of Wakf Vs. Government of India**

**and others 2004 (2) R.C.R (Civil) 702 (S.C.) and Rama Kanta Jain Vs. M.S Jain 1999(2) R.C.R (Civil) 685.** So, there is no escape from the conclusion that the plaintiff society is owner in possession of the plot in dispute by dint of the registered sale deed dated 17.05.1972.

16. So, the concurrent findings arrived at by the learned Courts below requires no interference in this regular second appeal while exercising the limited powers under Section 100 CPC.

17. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

18. Consequently, the present appeal having, no merits, is hereby dismissed with no orders as to costs.

**February 26, 2016**

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**(DARSHAN SINGH)  
JUDGE**