

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

RSA No.4657 of 2014

Date of decision: 22.02.2016

Smt. Meera and another

... Appellants

Versus

Smt. Shanti Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. Whether Reporters of local papers 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?

Present: Mr.Malkeet Singh, Advocate,
for the appellants.

AMOL RATTAN SINGH, J.

The legal representatives of the plaintiff before the learned Civil Judge (Senior Division), Fatehabad, in a suit filed for declaration, mandatory injunction and subsequent relief of permanent injunction, are before this Court, in regular second appeal. The original plaintiff, i.e. Chhotu Ram, was the husband of present appellant No.1 and father of appellant No.2. The suit filed by the plaintiff was dismissed by the learned Civil Judge and the appeal filed thereafter, was also dismissed by the first Appellate Court, of the learned Additional District Judge, Fatehabad.

2. As per the claim set up by the plaintiff, the respondents-defendants are his mother and married sister. He stated that he is owner in possession of a plot of 32 ft. x 24 ft., on which one bathroom and latrine had been constructed, with the rest of the plot lying vacant. The details of the suit property were described in the suit filed, being situated in the town of Fatehabad.

The ownership and possession of the respondent over the suit property was claimed on the basis of an agreement to sell, dated 01.07.2005, executed by one Ram Swarup son of Bhikha Ram. As per the plaintiffs' claim, earlier respondent-defendant No.1, i.e. the plaintiffs' mother, was owner of the suit property but she had sold it to the said Ram Swarup on the basis of an agreement to sell, dated 07.11.2004 and had also handed over possession of the plot, alongwith rubble on it. The plaintiff claimed that he had subsequently purchased the plot from the said Ram Swarup on the basis of the aforesaid agreement dated 01.07.2005.

3. Respondent-defendant No.2, it was stated in the plaint, had purchased a residential house of one Ram Chander, situated on the Eastern side of the plot that is suit property and, allegedly in collusion with their mother, respondent-defendant No.1, had opened a gate in the suit property, without the plaintiffs' consent. He wanted to raise construction on the plot but was being obstructed by the respondents, who, allegedly, were bent upon dispossessing the plaintiff.

Hence, the plaintiff instituted the suit, seeking a declaration that he is owner in possession of the plot, and that mandatory and permanent injunction be issued, restraining the respondents from interfering in his peaceful possession thereof and to allow him to raise construction upon it.

4. The respondents-defendants filed a joint written statement stating that the plaintiff had concealed the true facts in the plaint and that there were two agreements, with the first being dated 07.10.2004 and the second one dated 12.07.2007. The alleged agreement dated 01.07.2005, in favour of the plaintiff, was a forged one, with Ram Sawrup not having entered into any such agreement.

It was further contended that in fact, the agreement dated 12.07.2007 was executed between the plaintiff and his brothers, Bhagwan Dass and Champa Lal and respondent-defendant No.2 (their sister), by virtue of which respondent No.1 was made owner in possession of the suit plot, with the plaintiff left with no right, title or interest in it. It was further claimed that the possession of the suit plot was also with defendant No.1. The respondent-defendants also stated that defendant No.2 had been wrongly named as Bimla in the suit, whereas actually her name was Veena.

It was yet further stated that in the assessment register of the Municipal Council, the plot was shown in the name of defendant No.1, i.e. Shanti Devi.

5. A replication having been filed to the aforesaid written statement, reiterating the assertions in the plaint, the following issues were framed by the Civil Judge:-

- “i) Whether the plaintiff is owner in possession of plot measuring 32' x 24' comprising of latrine, bathroom, constructed over it as detailed in plaint on the basis of agreement of sale deed 1.7.2005 and is entitled to relief of mandatory as well as permanent injunction as prayed for? OPP
- ii) Whether the plaintiff is stopped from filing of the suit by his own act and conduct? OPD
- iii) Whether the suit of the plaintiff is not maintainable in the present form? OPD
- iv) Whether plaintiff has no locus standi to file the present suit? OPD
- v) Whether defendant No.1 is owner in possession of the suit property on account of agreement dated 12.07.2007 if so to what effect? OPD
- vi) Relief.”

6. By way of evidence, the plaintiff (predecessor-in-interest of the present appellants) examined one Girdhari Lal, said to be the attesting witness of the agreement to sell dated 01.07.2005 (Ex.P2) as PW1; he also examined Lal Chand, the attesting witness of the agreement to sell dated 07.10.2004 (Ex.P1) as PW2.

The plaintiff, Chhotu Ram himself stepped into the witness box as PW3, in support of his plaint.

He further examined one Atam Parkash Munjal, Deed-Writer of the agreement dated 07.10.2004, Ex.P1, as PW4 and Shamsheer Singh Malik, Handwriting and Finger Print Expert as PW5, who stood in support of his report Ex.PW5/A.

As per the report, the signatures of Ram Swarup on both the agreements, dated 07.10.2004 and 01.07.2005 (Exs.P1 and P2 respectively) tallied with each other, as also with the standard signatures of Ram Swarup.

(It is necessary to notice here that in the judgments of both the Courts below, the earlier agreement to sell is described as an agreement dated 07.11.2004, but while discussing the evidence, Ex.P1 is described as dated 07.10.2004. Learned counsel appearing before this Court, Mr. Malkeet Singh, submitted that actually it is dated 07.10.2004).

7. The respondents-defendants examined Ram Swarup, who is shown to be the vendee of the suit plot to whom respondent-defendant No.1 agreed to sell it vide agreement dated 07.11.2004 and with whom the plaintiff Chhotu Ram claimed he had entered into an agreement to purchase the suit plot, vide a subsequent agreement dated 01.07.2005.

8. The learned Civil Judge, upon appraising the oral and

documentary evidence led, held that both the documents relied upon by the plaintiff, i.e. agreements dated 07.10.2004 and 01.07.2005 (Exs. P1 and P2) were only agreements which did not confer any title. Hence, respondent-defendant No.1, Shanti Devi, mother of the plaintiff, having only agreed to sell a plot measuring 32' x 24' to Ram Swarup, by the agreement Ex.P1, who in turn agreed to sell it to the plaintiff, it was held that when Ram Swarup himself had not come into ownership or possession of the suit plot, he obviously could not alienate the same in favour of the plaintiff.

That Court further held that a right in immovable property of a value of more than Rs.100/-, could only be created by way of registration under the Indian Registration Act, 1908 and since there was no registration of either agreement to sell the plot, no benefit could be taken by the plaintiff.

9. As regards possession, it was held by the learned Civil Judge that both, PWs1 and 2, were ignorant about the boundaries of the suit plot and in fact, PW2 stated that both parties were in possession of it.

As such, it was held that the plaintiff was not in exclusive possession thereof.

That Court also held that though the plaintiff had deposed that the plot was apportioned into three parts, that was not the case set up by him in his plaint.

It was further held that as the boundaries of the suit property and those given on the agreement to sell dated 12.07.2007 (Ex.D1) did not tally, Ex.D1 was a different property. However, the plot which was subject matter of the agreement to sell dated 07.10.2004 (from respondent-defendant No.1 Shanti Devi to Ram Swarup) was a part of the property that was subject matter of the agreement dated 12.07.2007, i.e. the agreement claimed to be, by

the respondent-defendant, to have been executed between her sons Bhagwan Dass, Champa Lal and plaintiff Chhotu Ram, as also her daughter (their sister), defendant No.2 Bimla @ Veena. Yet, somehow, it was held that even on the basis of the said agreement, respondent-defendant No.1 had failed to establish that the suit property was part of the property given to her on the basis of the agreement dated 12.07.2007.

11. The Civil Judge (Senior Division) further held that the plaintiff had failed to prove his exclusive possession over the suit plot and also could not prove as to when he had raised a bathroom and latrine over it and constructed the boundary wall. This inference and conclusion was drawn by the Court on the basis of the statements of witnesses to the effect that the plaintiff remains at Jalandhar and not at Fatehabad.

Having concluded as above, the suit of the plaintiff was dismissed, holding that since he had not been able to prove his ownership, there could be no declaration to that effect and not being in exclusive possession, he could not be granted any mandatory or consequential permanent injunction.

The issue of Ram Swarups' signatures tallying on Exs.D1 and P2 were held to be inconsequential, in view of the fact that no title had passed to Ram Swarup to enable him to further alienate the property, with the plaintiff also not having been able to prove his possession over the suit property.

12. The present appellants, i.e. legal representatives of the plaintiff, filed an appeal before the learned District Judge, Fatehabad, which was also dismissed essentially on the same grounds as given by the learned Civil Judge.

The learned District Judge further went on to held that no benefit of Section 53-A of the Transfer of Property Act could also be given to the appellants. For this, reliance was placed by the learned lower Appellate Court upon a Division Bench judgment of this Court in **Ram Kishan and another v. Bijender Mann and others** (2013 (2) RCR (Civil) 419), wherein it was held that the failure to register an agreement, deprived the person in possession of any benefit conferred by Section 53-A.

The first Appellate Court also held that in any case, with exclusive possession of the appellants, or their predecessor, Chhotu Ram, not having been established even as per the statements of their own witnesses, no injunction could be issued in favour of the appellants.

13. Before this Court, Mr. Malkeet Singh, learned counsel appearing for the appellants, submitted that the appellants stood protected by Section 53-A of the Transfer of Property Act, 1882, which was not gone into at all by the learned Civil Judge and though discussed by the learned first Appellate Court, the protection granted to a transferee in possession of a suit property, was not fully appreciated by that Court. Thus, the predecessor of the appellants, i.e. Chhotu Ram-plaintiff, being in possession of the suit property, after an agreement to sell was duly executed by Ram Swarup in his favour, he would be protected by the aforesaid provision and as such, the appeal deserves to be allowed in favour of the appellants.

14. Having considered the argument of learned counsel, I find myself unable to agree with the same, in view of the fact that, firstly, Ram Swarup (who was not impleaded by the plaintiff), never came into possession of the suit property so as to pass such possession on to the plaintiff. Thus, with Ram Swarup himself not having either a possessory title, nor title as an owner,

simply on the basis of the agreement to sell executed between him and respondent-defendant No.1 Shanti Devi, (dated 07.10.2004), the subsequent agreement to sell with Chhotu Ram-plaintiff, even if accepted to have been actually executed, (though wholly denied by the respondents-defendants), would still create no right in the appellants.

Even if Chhotu Ram was in joint possession of the property, with the title vesting in his mother, Shanti Devi, Section 53-A of the Act of 1882 is wholly inapplicable, in view of the fact that such possession was not as a result of Ram Swarup passing it onto the plaintiff on the basis of the agreement to sell between them, but on account of he (Chhotu Ram) being his mothers' son. Hence, I find no error in the finding of the learned first Appellate Court that the said provision would confer no benefit on the appellants.

15. In view of the fact that neither any possessory nor any ownership title passed on to Ram Swarup from respondent-defendant No.1, Shanti Devi, I also find no error in the Courts below in not having gone into the issue of whether or not the agreement to sell dated 01.07.2005, between Ram Swarup and the original plaintiff (Chhotu Ram), was a genuine or a fraudulent/forged document. Even if it was a genuine document, even so, in view of the finding that no title or possession ever passed on to Ram Swarup, on the basis of an earlier agreement between him and respondent Shanti Devi, such as he could then pass on to Chhotu Ram-plaintiff, the genuineness or otherwise of the agreement to sell dated 01.07.2005, becomes inconsequential.

16. Therefore, in view of the above, finding no merit in the present appeal, it is dismissed *in limine*, with no order as to costs.

22.02.2016
dinesh/vcgarg

(AMOL RATTAN SINGH)
JUDGE