

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.6239 of 2014 (O&M)

Date of decision: 1.4.2016

Boriya and another

... Appellants

Versus

Harjinder Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Harish Nain, Advocate,
for the appellants

...

AMOL RATTAN SINGH, J. (Oral)

1. This appeal has been filed against the judgments and decrees of the learned Civil Judge (Junior Division), Narwana, and the learned District Judge, Jind, dated 31.8.2012 and 1.8.2014, respectively, dismissing the suit for permanent injunction filed by the appellants-plaintiffs, and the appeal filed against such dismissal.

The appellants-plaintiffs sought permanent injunction against the respondents-defendants from interfering in their peaceful possession of the suit property, stated to have been purchased by them from respondent No.3 herein, Ram Chander, vide sale deed dated 22.9.2009 (Ex.P-1 before the learned Civil Judge). On the basis of the sale deed, a mutation is also stated to have been entered in favour of the appellants-plaintiffs on 25.10.2009 (Ex.P-3).

2. The Courts below found that the vendor of the suit land to the appellants-plaintiff, i.e. the aforesaid Ram Chander, defendant No.3 before the trial Court, had purchased the suit land from one Krishna Devi (not

impleaded in the suit), vide a sale deed dated 22.08.2008. Krishna Devi, in turn had purchased 15/175th share in land measuring 8 kanals 15 marlas from one Chandan in 1973 and 16/176th share in the said land was purchased by one Sheo Chand son of Mai Chand, from the said Chandan.

Thereafter, Sheo Chands' son, Gulab Singh, vide sale deed dated 06.05.1980 (Ex.D1), had sold off land measuring 440 sq. yards to Harjinder Kaur, i.e. the respondent-defendant No.1.

Krishna Devi had sold off her share in the property, as per the finding of the learned Civil Judge, to Abhey Ram son of Sheo Chand (brother of Gulab Singh), vide sale deed dated 28.05.1991.

(As per the judgment of the learned first Appellate Court, appellant No.2, Sher Singh stood in the witness box as PW1 and had testified that he and appellant No.1 had together purchased 15 marlas equal to 446 sq. yards, i.e. 3/35 share, from Ram Chander, vide the sale deed dated 22.09.2009).

As per Krishna Devi, who stood as witness for the defendants (DW2), she had sold 13 marlas of her land, vide sale deed dated 28.05.1991. In her cross-examination, she stated that she had purchased 400 sq. yards and had never sold any of it to Harjinder Kaur but had sold it to Ram Kumar not to Ram Chander.

However, the learned Court below, after appraising the evidence, came to the finding that Krishna Devi had factually alienated her entire share in the suit land (15/175th share) to Abhey Ram and Ram Kumar, vide the sale deed dated 28.05.1991 (Ex.D5), and as such she was, in fact, left with no land to sell to Ram Chander on the date that she was stated to

have executed the sale deed in his favour, on 22.08.2008.

Obviously, once Ram Chander could not have been sold land that was not actually in the ownership of his vendor (Krishna Devi), he in turn, could not have sold any such land to the appellants-plaintiffs, vide sale deed dated 22.09.2009.

3. Learned counsel for the appellants has not been able to rebut these factual findings of the learned Court below.

He, however, rightly submits that it being a suit for permanent injunction, it would not be necessary to show the title to the land, but possession thereof, to be that of the appellants-plaintiffs.

A perusal of the finding of the Courts below, however, also shows that the appellants-plaintiffs could not prove even their possession on the suit land, in any manner. In fact, the question of title to the land was gone into by those learned Courts only because possession thereof was intricately linked to the title, as the sale deed dated 22.09.2009 also stated therein that possession of the property had been handed over to the vendees, i.e. the appellants-plaintiffs.

4. Learned counsel further submits that respondents-defendants No.1 and 2 (respondent No.2 being the husband of respondent N.1), actually reside in Panchkula and hence, cannot be in possession of land situated in Narwana, District Jind.

The said argument is wholly fallacious because to be in possession of any property, permanent physical presence of the person on the said property is, obviously, not necessary. A person living elsewhere can be, nevertheless, in complete control of property situate elsewhere, through

servants, agents etc.

No revenue record, or any witness examined, to prove that the suit property ever came into the possession of the appellants-plaintiffs, has been referred to, other than to the testimony of appellant No.2 himself, when he appeared as PW1.

Only the mutation entered in favour of the appellants, as to the title of the land, after the sale deed executed in their favour by Krishna Devi on 22.09.2009, has been relied upon by learned counsel.

No evidence led before the Courts below has been referred to, to disprove the reasoned finding of the Courts below. Learned counsels' contention repeatedly is that a sale deed having been executed in favour of the appellants-plaintiffs and mutation thereafter having been entered in their favour, their possession to the land would become a natural consequence, since a recital in the sale deed stated that possession of the suit land had been actually handed over to the appellants-plaintiffs.

In fact, on specific query, learned counsel submits that other than appellant No.2, Sher Singh, no other witness stepped into the witness box to state that actual possession of the suit land had ever been handed over to the appellants. He further submits, on query, that the revenue record, i.e. jamabandies (records of right), reflected Krishna Devi, vendor of the appellants-plaintiffs, to be in possession of the land, as shown in the column of cultivation, upto the years 2003-04 (Ex.P-4). As regards the years between 2003-04 to 2008-09, neither the appellants-plaintiffs, nor the respondents-defendants, exhibited any 'jamabandi; to show as to who was in possession, as per the column of cultivation.

5. Having considered the above, it is obvious from a perusal of the finding on facts by the Courts below, that Krishna Devi had already sold off her entire land to Abhey Ram and Ram Kumar on 28.5.1991, and as regards respondent No.1, Harjinder Kaur, she had purchased Sheo Chands' share from his son Gulab Singh, on 6.5.1980. She, thus, did not purchase any land from Krishna Devi.

The question, therefore, is that with Krishna Devi having sold off her share in the suit land to Abhey Ram and Ram Kumar on 28.5.1991, but still being shown to be in possession thereafter, could she have put Ram Chander (respondent No.4) in possession, after which Ram Chander put the appellants-plaintiffs in possession of the suit land?

That question has also to be answered in the negative, as Ram Chander himself was never, admittedly, ever shown to be in actual possession of the suit land. Hence, any recital in the sale deed executed by him, in favour of the appellants-plaintiffs, stating that he had handed over possession to the appellants-plaintiffs, cannot be believed on the face of it. Ram Chander also never stepped into the witness box to testify to that effect.

Therefore, simply on the basis of a mutation of title entered in favour of the appellants, on the basis of a sale deed executed in their favour by Krishna Devi on 22.09.2009, their possession over the suit land does not stand proved in any manner.

Learned counsel very fairly, on query, submits that Krishna Devi herself had stepped into the witness box as DW2 and stated that she never actually sold the suit land at all to Ram Chander and even denied her

photograph on the sale deed. Whether that was only to save her herself from criminal and other proceedings, is a matter of conjecture; however, be that as it may, the fact is that when Ram Chander never came into possession of the suit land himself, the question of his handing over such possession to the appellants-plaintiffs does not arise.

Hence, when the appellants-plaintiffs never came into physical possession of the suit land, a suit seeking permanent injunction against the respondents-defendants from interfering in their peaceful possession, obviously would not lie.

6. In view of what has been held above, this appeal is dismissed, with no order as to costs.

Nothing said herein above shall be construed to be any comment on the rights or otherwise of the appellants-plaintiffs qua recovery of any consideration money paid (or not paid) by them, to Ram Chander. Any such proceedings, if brought by the appellants-plaintiffs, would be decided wholly on the merits thereof.

CMs No.14857-C of 2014

In view of the fact that the appeal has been dismissed on merits, *in limine*, the question of condoning the delay of 20 days in filing it, is rendered academic.

1.4.2016
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(AMOL RATTAN SINGH)
JUDGE