

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

RSA No.2139 of 1990 (O&M)

Date of decision: 20.04.2017

Sobha

... Appellant

Vs.

Gram Panchayat Jhadpur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Harsh Nain, Advocate
for the appellant.

Mr. Rakesh Nehra, Advocate
for the respondents.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present regular second appeal, at the hands of unsuccessful plaintiff, is directed against the concurrent findings of facts recorded by the learned Courts below, whereby the learned trial Court vide its impugned judgment and decree dated 10.03.1990 dismissed the suit for declaration, which came to be upheld by the learned first appellate Court vide its impugned judgment and decree dated 23.10.1990.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that the plaintiff brought his suit in the Court below on 27.07.1987 in respect of a plot of land situated in the abadi of village Jhadpur and delineated by points ABCD in red shade, in the site plan attached with the plaint. According to the plaintiff, this plot was given to him by the Gram Panchayat through its resolution No.3 passed on 13.08.1977. The

plaintiff entered into possession of the said plot bearing khasra No.240/107 and had been enjoying it since then. The Gram Panchayat had since transferred the said plot to defendants No.2 and 3 through registered deed dated 15.02.1982. The plaintiff said that this action of the Gram Panchayat was illegal and was ineffective against his rights in the land. The plaintiff prayed for a decree for declaration to that effect.

Upon service, defendants put appearance. Gram Panchayat-defendant No.1 admitted the claim of the plaintiff. However, defendants No.2 and 3 filed their contesting and joint written statement, raising more than one preliminary objections. Replication was filed by the plaintiff. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is owner in possession over the suit property as alleged? OPP.
2. Whether sale deed dated 15.10.1982 in respect of the plot in dispute is illegal and void as alleged? OPP
3. Whether this Court has no jurisdiction to try the present suit? OPD.
4. Whether suit of the plaintiff is not maintainable in the present form? OPD.
5. Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD.
6. Relief.

In order to prove their respective stands taken in their pleadings, both the parties led their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has failed to

prove his case. Accordingly, the suit for declaration filed by the plaintiff was dismissed, vide impugned judgment and decree dated 10.03.1990. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 23.10.1990. Hence this regular second appeal at the hands of plaintiff. The appeal was admitted for regular hearing vide order dated 09.04.1991. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

A bare combined reading of both the impugned judgments and decrees passed by both the learned Courts will make it crystal clear that plaintiff-appellant had no case right from day one either on facts or in law. The entire case of the plaintiff was based on a resolution dated 13.08.1977 passed by the respondent-Gram Panchayat, whereby a plot measuring 07 marlas out of khewat No.204/107 was allegedly allotted in favour of the plaintiff. He also challenged the validity of gift deed dated 15.10.1982 registered by the Gram Panchayat in favour of defendants No.2 and 3, under a scheme floated by the State Government, for providing residential plots to the landless residents of the village.

In view of the abovesaid undisputed fact situation obtaining on record of the case in hand, when learned counsel for the appellant was confronted to refer to any authority or power of the Gram Panchayat to allot any plot by way of simple resolution without prior permission of the competent authority, he had no answer and rightly so, it being a matter of record. Learned counsel for the appellant also could not refer to any relevant material to show that the respondent-Gram Panchayat put the plaintiff-appellant in possession at any point of time in compliance of the alleged resolution dated 13.08.1977

Ex.P1. Having said that, this Court feels no hesitation to conclude that any such resolution would be of no consequence and it will not confer any title in favour of the plaintiff-appellant.

On the other hand, defendants No.2 and 3 duly proved their pleaded case by placing on record the registered gift deed dated 15.10.1982 as Ex.D1. Further, they also produced relevant jamabandi for the year 1984-85 as well as copy of the mutation duly sanctioned in their favour on 28.05.1984 as Ex.D3 and Ex.D4. Presumption of truth is attached to the revenue entries under Section 44 of the Punjab Land Revenue Act. Under these undisputed facts and circumstances of the case, it can be safely concluded that the defendants-respondents were rightly held owners in possession of the suit land and the plaintiff-appellant was rightly non-suited by both the learned Courts, by recording their concurrent findings of facts, because of which the impugned judgments and decrees deserve to be upheld.

Before arriving at its judicious conclusion, learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned Additional District Judge in paras 8 to 11 of his impugned judgment, which deserve to be noticed here, read as under: -

“It is submitted that the plaintiff has got only a resolution in his favour, whereas the defendants have registered gift deeds in their favour. This is admitted by the plaintiff in para 3 of his plaint. It also cannot be denied that the suit property is immovable one having a value of more than Rs.100/-. That being so, it could be transferred only by way of registered document under Section 17 of the Indian Registration Act, hereinafter called the Act. The

plaintiff has no such document in his favour. Rather, the defendants have the registered gift deeds. Section 48 of the Act envisages that such registered document shall take effect as against any oral agreement or declaration relating to such property whether or not such agreement or declaration is accompanied by delivery of possession. It is the registered deed which would constitute a valid transfer under any law for the time being in force. This legal proposition is not controverted by the learned counsel for the plaintiff. In this situation, the plaintiff cannot succeed simply on the basis of the resolution in his favour. That resolution cannot validly transfer the property to the plaintiff and it remained under the ownership of the gram panchayat till it was transferred to the defendants through registered gift deeds dated 15.10.1982. This position would remain, even if, it be assumed that the resolution in favour of the plaintiff was rightly passed and its copy Ex.P1, be taken to have been proved.

*Section 97 of the Gram Panchayat Act speaks of the powers of the Deputy Commissioner or the S.D.O. to suspend any resolution or order of the Gram Panchayat. Similarly, rule 34 of the Rules framed under the said Act provides a remedy to the aggrieved person to prefer an application to the Deputy Commissioner, or the S.D.O. against such resolution because they were not in the picture when it was passed on 13.08.1977. They had no legitimate right to challenge it under Rule 34 *ibid*. moreover, it did not confer any legal right in favour of the plaintiff. So, there was no need for the defendants to impeach that*

resolution. In fact, the property was not legally transferred to the plaintiff.

The other argument of the learned counsel for the plaintiff is that his client is in possession of the suit land. This fact he seeks to prove by leading the evidence of Sardare PW2, Hoshiar Singh PW3 and by his own evidence as PW4. The defendants did not step into the witness box though they examined Chand Ram DW1, Mam Chand DW2 and placed on record the copy of the jamabandi for the year 1984-85, Ex.D1 (wrongly referred to as Ex.P1 by the trial Court).

The above contention of the learned counsel for the plaintiff is in consequential because the plaintiff has not sought the relief of permanent injunction to protect his alleged possession over the plot. The plaintiff's suit is simply for declaration whereby he seeks relief against the registered gift deeds in favour of the defendants. It is pertinent to note that the resolution, copy Ex.P1, in plaintiff's favour does not speak of the delivery of possession to him. The oral evidence produced by the plaintiff is not difficult to lead. At any rate, it cannot be given preference to the entry in the jamabandi, copy Ex.D1, which carries a presumption of truth in its favour. Herein, it is the defendants who are shown to be in possession of the plot in dispute. In these circumstances, the absence of the defendants in the witness box has no bearing on the merits of the case. They have fully met the evidence of the plaintiff by other material on record. Resultantly, this argument of the learned counsel for the plaintiff is rejected.”

It is the settled proposition of law that appellant being the plaintiff, onus was on him to prove his case by leading cogent and convincing evidence. However, he miserably failed to prove his pleaded case. Pleadings alone would not be sufficient to decree the suit. Plaintiff is supposed to stand on his own legs instead of trying to prove the case on alleged weakness of the case of defendants. Further, plaintiff failed to prove his possession over the suit land. This seems to be the reason that the plaintiff did not seek any relief of permanent injunction, because he was not in possession. In this view of the matter, it is unhesitatingly held that the learned Courts below were well justified in passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***T.K. Mohammed Abubucker (D) through LRs and others Vs. P.S.M. Ahamed Abdul Khader and others, 2009 (14) SCC 224 (SC).***
2. ***V. Srinivasaraju Vs. M/s Bharat Electronics Ltd. and others, 2009 (17) SCC 135 (SC).***
3. ***Sebastiao Luis Fernandes (Dead) through LRs and others Vs. K.V.P. Shastri (Dead) through LRs and others, 2013 (15) SCC 161 (SC).***
4. ***Smt. Ramesh Vs. Sheo Narayan and another, 2011 (52) RCR (Civil) 801 (P&H).***
5. ***Joginder Kaur Vs. Gurmej Singh, 2013 (1) RCR (Civil) 583 (P&H).***

During the course of hearing, learned counsel for the appellant

could not point out any patent illegality or perversity in either of the impugned judgments and decrees. He also could not point out any question of law, much less substantial question of law, which is sine qua non for entertaining any regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality has been found in either of the impugned judgments and decrees passed by both the learned Courts below, the same deserve to be upheld. The regular second appeal, having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

20.04.2017
vishnu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No