

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.422 of 1989

Date of decision:24.8.2017

Garib Dass and others

...Appellants

Versus

Mohan Lal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Sushil Kumar Goyal, Advocate for the appellants.
Mr.Ashok Gupta, Advocate for respondents No.1 to 4 and 6.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful defendants are in the regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for recovery of Rs.5,000/- filed by the plaintiff was decreed by the learned trial court, vide its impugned judgment and decree dated 25.3.1986 and first appeal of the defendants was also dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 4.11.1988.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of the impugned judgment, are that the suit was filed by Maha Devi on the ground that she was owner of the land in dispute as detailed in the heading of the plaint, and she being an old lady having no male heir, or relation had appointed Sita Ram, her son-in-law to whom her daughter Krishna was married, as her power of attorney to manage her

property on her behalf. However, Puran, father of defendants No. 1 to 4 and husband of defendant No.5 and defendants No.2 and 3 induced Sita Ram aforementioned on 27.4.72 to enter into an agreement of sale of the land in dispute, for a meager sum of Rs.6,000/- without the permission and consent of the plaintiff. It was pleaded that the plaintiff never authorised Sita Ram, defendant No.10 to sell the property in question. It was further stated that the consideration of alleged agreement of sale was inadequate. It was next stated that the plaintiff never delivered the possession of the land to defendants No.1 and 2, Puran Chand deceased and defendants No.7 and 8 and the entry got made by them in the revenue record to that effect was illegal and wrong. It was also pleaded that there were 215 trees of Kikar, 4 shisham trees and one neem tree in the land in dispute. Puran and defendants No.7 and 8 were alleged to have sold 40 trees out of them to one Fakiria and on learning the same, the plaintiff filed a suit on 8.9.1979 praying for a decree for declaration with consequential relief of possession of the land in dispute as also for a decree for permanent injunction, restraining the defendants-appellants from cutting and removing the trees standing on the suit land. The plaintiff also filed an application for ad-interim injunction which was granted. Defendants No.1 to 8 in collusion with the police, were alleged to have sold the trees to defendant No.9 and in collusion with the police defendants No.1 to 9 were alleged to have cut and removed trees numbering 220 and worth Rs.5,000/- with any right to do so. The plaintiff brought this suit for recovery of Rs.5,000/- claiming herself to be entitled to recover the said amount from the defendants.

Defendants were put to notice. They appeared and filed their

contesting written statement raising more than one preliminary objections. Plaintiff filed her replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

- i. Whether the plaintiff is entitled to the recovery of Rs.5000/- as alleged in the plaint? OPP
- ii. Whether the suit is liable to be stayed under Section 10 C.P.C. as alleged in the written statement? OPD
- iii. Whether the plaintiff has no locus standi to file the present suit? If so, to what effect? OPD
- iv. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties produced on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiff has duly proved her case by leading cogent and convincing evidence, which was found sufficient to decree the suit. Accordingly, suit for recovery of Rs.5,000/- filed by the plaintiff was decreed by the learned trial court, vide its impugned judgment and decree dated 25.3.1986. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 4.11.1988. Hence, this regular second appeal, at the hands of the unsuccessful defendants.

Heard learned counsel for the appellants.

A combined reading of both the impugned judgments and decrees passed by the learned courts below will make it crystal clear that the plaintiff has duly proved her case by leading cogent and convincing

evidence. This was the reason that the learned courts below recorded their concurrent findings of facts. The suit of the plaintiff was rightly decreed by placing reliance on the earlier judgment Ex.DX. It was established that agreement to sell was validly executed by Sita Ram on behalf of plaintiff in favour of the appellants. Thereafter, appellants were inducted in possession in compliance of the said agreement to sell. Defendants-appellants tried to take undue advantage. They miserably failed to prove their pleaded case.

The plea taken on behalf of the appellants that no trees were standing in the suit land was found to be factually incorrect. In fact, it was duly established on record by cogent and convincing evidence led by the plaintiff that defendants had cut and removed about 200 trees standing on the suit land. It was so held by the learned trial court, while passing the impugned judgment and decree, whereby suit of the plaintiff was rightly decreed. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Learned Additional District Judge, before arriving at his judicious conclusion, rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant observations made by the learned first appellate court in paras 12 to 15 of its impugned judgment, which deserve to be noticed here, read as under:-

“Now coming to the merits of this appeal Shri Baryam Singh, learned counsel for the appellants assailed the finding of the trial court recorded under issue No.1 and it was argued

hotly that as the appellants were in possession of the suit land in part performance of the contract of sale executed by Sita Ram on behalf of Maha Devi deceased-plaintiff, they were entitled to defend their possession, under Section 53-A of the Transfer of Property Act and the plaintiff-respondents were not entitled to claim any amount for any trees standing in the suit land.

From the judgment, Ex. DX passed by the appellate court it now stands established that the agreement of sale was validly executed by Sita Ram on behalf of Maha Devi in favour of the appellants and that the appellants were also inducted in possession of the suit land in part performance of the said agreement of sale. According to the appellants there were no trees in the suit property and that they did not cut them. One perusal of the oral evidence led by Maha Devi now deceased-plaintiff, who besides making of her own statement on oath, also produced Atma Ram, P.W.2, Fakiria P.W.3 and Jog Dian P.W.4., it is evident that there were about 200 trees in the suit land and as per the testimony of Fakiria Ram P.W.3 who was Member Panchayat, the matter was first reported to the police and then was entrusted to Gram Panchayat to whom the timber was kept for safe custody. Fakiria P.W.3 further has, however, deposed that after 2 days the defendants lifted the wood in truck No.2157. On the other hand Garib Dass who appeared as D.W.1 has stated that there were no trees in the suit property and so was the testimony of Kaka Ram D.W.2 and that of Barkha Ram D.W.3. The evidence of the defendants that there were no trees in the suit land stands belied by the oral testimony of Atma Ram P.W. 2, Fakiria P.W.3 and that of Jog Dhan P.W.4. It is, therefore, evident that the defendant-appellants had cut and removed about 200 trees standing in the suit land as rightly held by the trial court.

Now coming to the legal position, the appellants who are in possession of the suit land in part performance of the agreement of sale are entitled to protect their possession as a

shield and the agreement of sale does not confer any title on them. The provisions of Section 53-A of the Transfer of Property Act does not create title and it is settled law that the transferee in possession can defend his possession under certain conditions stipulated in Section 53-A of the Act. So far as the trees on an agricultural land are concerned, they obviously belong to the owner of the soil as held by Punjab and Haryana High Court in Panni Lal Vs. Med Singh 1987 Recent Revenue Reports 6 and that being the position, once it is held that the appellants had removed the trees, the plaintiff-respondents were entitled to recover the price from the appellants. Although there was no precise material on the file to judge the prior of those trees but the learned trial court has rightly decreed the suit because even if the value of timber of one trees is held to be Rs.100/- even then the plaintiff could claim Rs.20,000/-.

So far as the authority in Nathulal Vs. Phool Chand A.I.R. 1970 S.C. 546 referred to by Shri Baryam Singh learned counsel for the appellants is concerned, this authority has reiterated the doctrine of part performance and its essential conditions and it has nowhere been held that the trees standing of the property agreed to be sold does not belong to the owner. The facts of this authority are, therefore, distinguishable and this authority is of no assistance to the appellants.”

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He was also unable to refer to 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. Both the impugned judgments and decrees have been found based on cogent findings recorded by the learned

Courts below and the same deserve to be upheld, for this reason also. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286 and Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.**

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 the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

24.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No