

RSA No. 2024 of 2015 (O&M)

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2024 of 2015 (O&M)

DATE OF DECISION:24.05.2017

Rajbir Singh

.....Appellant

Versus

Ved Parkash

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ram Bilas Gupta, Advocate
for the appellant.

DAYA CHAUDHARY, J.

The present regular second appeal has been filed by appellant-plaintiff-Rajbir Singh to challenge impugned judgments and decrees passed by both the Courts below.

Briefly, the facts of the case as made out in the present appeal are that the appellant-plaintiff filed a civil suit for permanent injunction restraining the respondent-defendant from dispossessing him unlawfully and forcibly from the suit property. The claim of the appellant-plaintiff was based on the agreement to sell dated 24.5.1997 alleged to have been executed by the respondent-defendant in his favour. The suit was contested by the respondent-defendant by way of filing written statement-cum-counter claim. The suit of the appellant-plaintiff was dismissed and the counter claim of respondent-defendant was decreed to the effect that the plaintiff is restrained from interfering in peaceful possession of the defendant over the suit property and from dispossessing him illegally. The judgment and decree dated 23.8.2013 passed by the trial Court was challenged by the appellant-

plaintiff by way of filing an appeal before the learned Additional District Judge, Faridabad, which was also dismissed on 9.10.2014.

After losing the battle before the two Courts below, the appellant-plaintiff has filed the present regular second appeal before this Court to challenge the judgments and decrees passed by both the Courts below.

Learned counsel for the appellant submits that the judgments and decrees passed by both the Courts below are not based on proper appreciation of evidence led by appellant-plaintiff. Learned counsel further submits that the respondent-defendant was claiming his possession over the suit property but he failed to prove the same by way of any documentary evidence, whereas, the appellant has proved on record that he was owner in possession of the suit property by placing on record copy of the certificate issued by the Sarpanch of the Gram Panchayat Atali as Ex PW2/A and Ex. P2 and also electricity bills as Ex. P3. Learned counsel also submits that both the Courts below have failed to take into consideration the stand of respondent that agreement to sell and receipt are forged and fabricated documents but no such complaint was ever made against the appellant. Respondent-defendant had admitted in his cross-examination that he was residing in Delhi for the last 25 years but in the cross-examination he had admitted that he was not having any document to show as to from whom he had purchased the material for construction of the house in dispute. The electricity connection of the house in dispute in the name of the appellant shows possession of the appellant and the same has not been taken into consideration. At the end, learned counsel submits that the appellant-plaintiff has produced on record the statements of witnesses to prove that

the agreement to sell was executed by respondent-defendant in his favour for a total consideration of ₹10,000/- which was paid against receipt but the same has not been taken into consideration.

Heard the arguments advanced by learned counsel for the appellant and have also gone through the impugned judgments and decrees passed by both the Courts below as well as other documents available on the file.

The facts relating to filing of suit by the appellant-plaintiff, dismissal thereof, filing of an appeal against the judgment and decree passed by the trial Court and thereafter its dismissal are not disputed.

The following issues were framed by the trial Court:-

1. Whether the plaintiff is owners in possession of the suit property? OPP
2. Whether the plaintiff is entitled to the relief of injunction? OPP
3. Whether the suit is not maintainable? OPD
4. Whether the suit is liable to be dismissed with costs? OPD
5. Reilef.

The finding recorded by the trial Court are reproduced as under:-

“13. The claim of the plaintiff is based on an agreement to sell dated 24.05.1998 allegedly executed by defendant no.1 in his favour. In order to prove the said agreement the plaintiff has examined PW-5 Khajan Singh who has deposed that he was an attesting witness to the agreement and the receipt. PW-6 Peer Chand has deposed that Rajvir had purchased a plot measuring 100 sq. Tards from Ved Parkash about 14 years ago and had

constructed a house thereon and had been living there with his family. He further deposed that the electricity connection in respect of the said house was in the name of Rajbir who lived in Village Atali and that Ved Parkash lived in Delhi. However, throughout his evidence he has not mentioned the khasra number of the house where Rajvir had been living. Moreover in the cross-examination he admitted that he was not in possession of any document which could show that the defendant lived in Delhi and that the plaintiff was living in the suit property after constructing the house thereon. PW-7 Ranjeet Singh deposed that Rajvir had purchased a plot from Ved Parkash and constructed a house thereon, however, the house was not purchased in his presence nor was any document prepared in his presence. PW-4 Om Parkash has been examined to prove that the electricity connection No. AA14-1126-N had been installed in the name of Rajbir on 02.09.2004 in village Atali. However, his testimony does not go to show that the said electricity meter was installed on over the suit property. Moreover, mere installation of an electricity meter in the name of a person does not prove his ownership or possession thereof. PW-Daya Ram has been examined by the plaintiff to prove the certificate issued by him wherein he has stated that the plaintiff was living in a house constructed by him over khasra No.33/25/2/7 village Atali. However, in his cross-examination he deposed that he had not brought with him the record on the basis of which, he had issued the certificate.

He stated that Rajvir had moved an application before the Court. He further deposed that the suit property could not have been sold by the allottee. PW-3 Mahender Singh testified through his affidavit Ex.PW-3/A wherein he deposed that he was an attesting witness to the agreement to sell dated 24.05.1998 and the receipt executed by the defendant in favour of the plaintiff. However, in his cross-examination the witness deposed that the document Ex.PW-3/A was not written in his presence and that, he could not read the documents since he had low visibility since the last 4 to 5 years. The material testimony is that of the plaintiff, who has admitted in his cross-examination that the defendant is in possession of the suit property. Moreover the copy of jamabandi Ex. D-1 placed on record shows that it is the defendant who is owner in possession of the suit property. As per Section 44 of the Punjab Land Revenue Act presumption of truth and correctness is attached to the entries made in the jamabandi and the said presumption is rebuttable only on basis of cogent evidence. Moreover, an agreement to sell does not confer ownership rights upon the party in whose favour the agreement has been executed. In the present case, the agreement to sell is an un-registered document which does not confer any rights upon the plaintiff. Thus, from the evidence or record, it comes up that it is the defendant who is in possession of the suit property. Hence, issues No. 1 and 2 and counter-claim of the defendant are decided accordingly and it is held that the defendant no.1 is

entitled to permanent injunction restraining the plaintiff from interfering in his peaceful possession of the suit property and from dispossessing him therefrom illegally.”

Similarly, the findings recorded by the lower Appellate Court are reproduced as under:-

24. It is case of plaintiff that he is owner in possession of property in dispute. It is claimed that he had purchased it from defendant No.1 vide Ex. P1. Mark A is another agreement. Mark B is receipt. But all these documents are photocopies. It is admitted proposition of law that primary and original evidence should come before Court. But plaintiff withheld same for reasons best known to him. In case he lost original, he should have sought permission to prove same by way of photocopy. But he failed to do so. So, in absence of original, these documents cannot be relied upon. Moreover, mere agreement to sell does not confer ownership/title. So, plaintiff cannot claim to have become owner by virtue of such agreement to sell.

25. It is claimed that he is seeking injunction only. As per that agreement, possession was delivered to him but that is again not correct. He has relied upon electricity bills and certificate issued by Sarpanch of village Atali. But bills do not show that electricity connection installed in house built in this plot.

26. In so far certificate issued by Sarpanch is concerned, that cannot be treated at par with documents like record of right &

sale deed. Defendant No.1 has relied upon Ex.D2 jamabandi which shows him owner in possession of property in dispute. Another document is allotment letter i.e Ex. D3 which shows that it was allotted to him by Haryana Government. In these circumstances plaintiff cannot be believed that he is owner in possession of property in dispute.

27. Moreover, interest in immovable property worth more than Rs. 100/- cannot be transferred vide an unregistered document. Plaintiff's documents are not only photocopies but unregistered also which cannot be read in evidence. In these circumstances there is no merit in appeal, hence rejected. Decree sheet be prepared accordingly. LCR alongwith copy of this order be sent back. File be consigned to record room after due compliance.

A perusal of findings recorded by both the Courts below clearly shows that the plaintiff-appellant has claimed possession over the suit property on the ground that he had purchased the suit property from defendant No.1 vide Ex. P1. He has relied upon agreement to sell Mark A and receipt as Mark B but all these documents were photocopies and not the original. Nothing has been proved on record that the original documents were lost or were in possession of the other party. The appellant-plaintiff has also not taken any permission from the Court to prove the photocopy of the documents by way of secondary evidence. In the absence of original documents, the photocopies could not be relied upon. Moreover, mere agreement to sell does not confer ownership/title and as such the appellant-plaintiff cannot claim his right of ownership only on the basis of agreement

to sell. He has also claimed injunction, whereas, he could not prove his possession over the suit property. Only on the basis of electricity bills and certificate issued by the Sarpanch of the village, the appellant-plaintiff has claimed his right of ownership and possession. The bills even do not show that the electric connection was installed in the house which was built up over the land or plot. Even the agreement to sell was an unregistered document, which does not confer any right of ownership upon the appellant-plaintiff.

It is well settled law that in case a party wishes to lead secondary evidence, the Court is obliged to examine the probative value of the document produced in the Court or their contents and decide the question of admissibility of a document in secondary evidence. It is also equally settled that neither mere admission of a document in evidence amounts to its proof nor mere making of an exhibit of a document dispense with its proof, which is otherwise required to be done in accordance with law. It is not the case of the appellant-plaintiff that original documents were lost and photocopies were brought on record. As a general rule, documents are proved by leading primary evidence unless it is established that the original documents were lost, destroyed or deliberately withheld by the party in respect of that document sought to be used, secondary evidence in respect of that document cannot be accepted. Same view was taken by Hon'ble the Apex Court in the case of **Rakesh Mohindra Vs. Anita Beri and others** 2015 (4) RCR (Civil) 1023.

Sections 63 and 65 (a) are relevant for resolving the controversy in hand and are reproduced as under:-

63. Secondary evidence.—Secondary evidence means and

includes—

(1) Certified copies given under the provisions hereinafter contained;

[\(2\)](#) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

[\(3\)](#) Copies made from or compared with the original;

[\(4\)](#) Counterparts of documents as against the parties who did not execute them;

[\(5\)](#) Oral accounts of the contents of a document given by some person who has himself seen it.

65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

[\(a\)](#) When the original is shown or appears to be in the possession or power— of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it.”

The conditions laid down in the aforesaid sections must be fulfilled before secondary evidence can be admitted. Secondary evidence cannot be admitted without non-production of the original documents and without making out a case that the original one was lost, destroyed or the same is in possession of the party opposite. Same issue was taken by

Hon'ble the Apex Court in the case of **Smt. J. Yasodha Vs. K. Shoba Rani** 2007 (2) RCR (Civil) 840 while relying upon another judgment of Hon'ble the Apex Court in the case of **Ashok Dullichand Vs. Madahavalal Dubey and another** 1975 (4) SCC, which is reproduced as under:-

“After hearing the learned counsel for the parties, we are of the opinion that the order of the High Court in this respect calls for no interference. According to clause (a) of [Section 65](#) of the Indian Evidence Act, secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in [Section 66](#), such person does not produce it. Clauses (b) to (g) of [Section 65](#) specify some other contingencies wherein secondary evidence relating to a document may be given, but we are not concerned with those clauses as it is the common case of the parties that the present case is not covered by those clauses. In order to bring his case within the purview of clause (a) of [Section 65](#), the appellant filed applications on July 4, 1973, before respondent No. 1 was examined as a witness, praying that the said respondent be ordered to produce the original manuscript of which, according to the appellant, he had filed photostat copy. Prayer was also made by the appellant that in case respondent No. 1 denied that the said manuscript had been written by him,

the photostat copy might be got examined from a handwriting expert. The appellant also filed affidavit in support of his applications. It was, however, nowhere stated in the affidavit that the original document of which the photostat copy had been filed by the appellant was in the possession of respondent No. 1. There was also no other material on the record to indicate that the original document was in the possession of respondent No. 1. The appellant further failed to explain as to what were the circumstances under which the photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. Respondent No. 1 in his affidavit denied being in possession of or having anything to do with such a document. The photostat copy appeared to the High Court to be not above suspicion. In view of all the circumstances, the High Court came to the conclusion that no foundation had been laid by the appellant for leading secondary evidence in the shape of the photostat copy. We find no infirmity in the above order of the High Court as might justify interference by this Court.”

In the present case also, the appellant-plaintiff has not been able to prove his case on the basis of evidence led by him and as such I do not find any reason to interfere with the findings recorded by both the Courts below and as such the appeal being devoid of any merit is hereby dismissed.

May 24, 2017

pooja

Whether speaking/reasoned

Whether reportable

(DAYA CHAUDHARY)

JUDGE

Yes

Yes