IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4297 of 2015 (O&M)
Date of Decision: January 13, 2017

Bharat Bhushan Bansal

..Appellant(s)

Versus

Satish Kumar Bansal

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. N.S. Shekhawat, Advocate
for the appellant.

Mr. Ramesh Kumar Bansal, Advocate
for the respondent.

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ANITA CHAUDHRY, J.

CM No.10378-C of 2015

For the reasons set out in the application, same is allowed as prayed for and delay of 16 days in re-filing the present appeal is condoned.

RSA No. 4297 of 2015

This is the defendant's second appeal aggrieved by the judgments passed by the Courts below.

The lis is between two brothers with respect to a house in Mohali (Punjab). A suit for mandatory injunction was filed by plaintiff, Satish Kumar Bansal seeking directions to the defendant to remove his belongings and refrain from using the property. He was also seeking recovery of damages @ Rs.10,000/- per month w.e.f. 01.04.2010 till the property was vacated. The plaintiff had averred that he had allowed his brother to use his house and he was a licensee. It was also his case that both of them were business partners in a firm M/s. Saraswati Marbles but he was shown as a employee in the firm only for income-tax purposes. With time they separated their business and settled their accounts and defendant agreed to pay Rs.5,56,000/- to the plaintiff to settle the plaintiff's claim. The defendant in order to discharge the admitted liability issued two post dated cheques for a sum of Rs.5,56,000/-. After the brothers had parted ways, the plaintiff started his own business in the name and style of M/s. Surya Marble. It was pleaded that he asked his brother to vacate the house but the defendant instead of vacating and with an intention to grab the property forged a document in connivance with Suresh Kumar and filed a frivolous suit. The plaintiff received summons without the copy of the plaint and on inquiry he came to know that a false and frivolous case had been filed on the basis of forged documents. The plaintiff sent a legal notice dated 17.02.2016 revoking the license and called upon him to hand over the possession after the expiry of 15 days. It was pleaded that the defendant failed to vacate the premises, therefore the suit.

The defendant took some legal objections regarding maintainability and that the plaintiff had not come with clean hands. It was admitted that the plaintiff was his younger brother. It was denied that the plaintiff was his partner. It was averred that the plaintiff was working with him on salary. It was pleaded that the house had been purchased in the year 1999 by the defendant from the original allottee namely Neelam Wadhwa and a sum of Rs.1,40,000/- was paid to her which was paid up money to the Punjab Urban Development Authority (hereinafter referred to as PUDA) in installments. It was pleaded that a sum of Rs.1,40,000/- was taken from the account of the ledger on 15.11.1999 and the defendant prepared a draft of Rs.1,40,000- from Times Bank, Mohali for payment to Neelam Wadhwa but subsequently the plaintiff got the transfer papers in his name malafidely without letting him know. It was pleaded that he took possession of the house in January, 2000 and started living there and thereafter, completed the construction. It was pleaded that he allowed the plaintiff to reside on the first floor and the second floor was used for storing miscellaneous articles. It was pleaded that the plaintiff started claiming sole ownership of the house and this fact was brought to the notice of their parents and they were apprised of the real facts and the mater was resolved through a compromise in the first week of April, 2004 and it was decided that whoever offered the maximum amount, could get the house on payment of half of the maximum offered price and both of them gave a bid and the higher bid was of the defendant and he was held entitled to the house on payment of half of the offered amount. It was pleaded that it was also decided that the defendant will pay Rs.62,500/- within one week and the remaining amount was settled to be paid in three and a half month and the house was to be vacated within one month. It was pleaded that there were some other conditions but are not necessary as they are not relevant. It was averred that the plaintiff vacated the house after taking Rs.3,06,500/- in cash and started living in Phase-7, Mohali on rent and later shifted to Kharar. It was pleaded that a sum of Rs.2,56,000/- was paid through cheque from the account on 16.07.2004 and another sum of Rs.3 lacs was paid also through cheque on the same date and in this manner full payment had been paid. It was pleaded that no date for execution of the sale deed was fixed. It was pleaded that the plaintiff had fraudulently got the entry of the house changed in his name with a malafide intention and was threatening to forcibly get the property vacated and a suit had been filed which was pending.

The parties were put to trial on the following issues:-

1. Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP
2. Whether suit of the plaintiff is without any cause of action? OPD
3. Whether the suit of the plaintiff is not properly valued? OPD
4. Relief

The trial Court dismissed the suit of the plaintiff. A finding was given that the title rested in the plaintiff. There was dispute regarding the status of the defendant and a settlement had been effected and the defendant was in possession pursuant to the settlement and some amount had been paid. It was held that the defendant was a licensee but the suit for mandatory injunction was not maintainable.

The plaintiff filed an appeal, which was allowed and the defendant was directed to vacate the premises within three months and also pay damages @ Rs.5,000/- per month from the date of institution of the suit. During the pendency of the appeal an application had been moved by the plaintiff to frame additional issue regarding damages but it was dismissed.

The appellate Court found that it was the plaintiff who was the owner of the property and therefore, there was no question of any settlement with the defendant. It noted that the allotment had been transferred in favour of the plaintiff and there was a conveyance deed in his favour. It also found that the agreement to sell was executed by the original allottee in favour of the plaintiff and the amount had been paid by the plaintiff. It also took into account that the original allottee had appointed the defendant as GPA and it was the GPA (appellant) who had got the deed registered in the name of the plaintiff. The Court also found that payment was not made by the defendant and he was to establish in what capacity he was holding possession. It rejected the document Mark-A set up by the defendant. It was held that the document had not been proved and by implication it was held that the defendant was a licensee and notice had been issued to him. It also took note of the fact that the defendant had filed a suit for specific performance based on the settlement Mark-A which had been dismissed.

The appeal was allowed. The judgment and decree of the lower Court was set aside and the defendant was directed to vacate the premises within three months. He also asked to pay damages @ Rs.5,000/- per month from the date of institution till actual vacation.

I have heard both the sides. The record has been perused.

The counsel for the appellant vehemently urged that the plaintiff had got the sale deed executed in his own name by playing fraud and when this fact came to their notice, the parents got a settlement effected and both the brothers were asked to give a bid and it was agreed that the person who would give the higher bid would be declared owner after payment of half of the total bid price to the other side and the appellant has proved on the record that two cheques were paid on 16.07.2004 and a sum of Rs.5,56,000/- had been paid. It was urged that the suit for mandatory injunction was not maintainable. It was urged that the plaintiff had averred that he was a partner but he could not lead any evidence and he was just an employee. It was urged that after the settlement was effected, the plaintiff had vacated the property and had shifted to another property and a suit for possession only was maintainable and advalorem court fee was payable.

The submission on the other hand was that false pleas have been taken by the appellant and it is a case where the original allottee executed a General Power of Attorney in favour of the appellant and it was the appellant who had executed the sale deed in favour of the plaintiff and no fraud had been played. It was urged that the appellant forged a settlement and the document was not proved and is marked and on the basis of that forged document he had filed a suit for specific performance which had been dismissed by the trial Court and they had placed the copy of the judgment by way of additional evidence before the appellate Court. It was urged that the appellant in the suit filed by him had filed an application for leading secondary evidence with respect to the settlement, which was declined and the order was assailed before the High Court, which was dismissed on 03.10.2012 and a categoric finding was given that it was not an agreement or settlement but a bid sheet. It was urged that still not satisfied with the order, the appellant had approached the Apex Court and had filed a Special Leave petition, which was dismissed on 28.04.2014. It was urged that the appellant had filed an appeal assailing the order of the trial Court and was not arguing the matter and had moved an application before the appellate Court for adjourning the appeal sine-die to await the verdict in this appeal and he was placing on record the copy of the application moved by him. It was urged that the respondent-plaintiff had moved out of the house along with his parents because of the attitude of the appellant and it became impossible for him and his parents to stay in the same house and they had taken another property on rent. It was urged that a suit for mandatory injunction was maintainable and the title vested in him and he had allowed his brother to stay in the property and his status was that of a licensee and notice had been given and he had failed to vacate and therefore, the suit for mandatory injunction was filed. It was urged that it was the duty of the licensee to surrender the possession and the appellant had approached the Civil Court to seek his remedy based on a false document, which had been dismissed by the trial Court. Reliance was placed upon ***Sant Lal Jain Vs. Avtar Singh 1985 AIR (SC) 857, Surjit Kaur Vs. Balwinder Kaur 2006(1) CCC 118 (P&H), Arjan Dev Vs. Om Parkash 1992 AIR (Delhi) 202, Sohan Singh Vs. Piara Singh 2001(1) CCC 439 (P&H), Jagdish Vs. Brij Lal 2006(4) RCR (Civil) 777, Neeta Gajwani & Ors. Vs. Hari Ram Achharia & Ors. 2013(3) CCC 454 (Allahabad), Ajab Singh Vs. Shital Puri 1993 AIR (Allahabad 138, Th. Milka Singh and others Vs. Th. Diana and others 1964 AIR (J&K) 99, Sardar Paramjeet Singh and Ors. Vs. Prabhat Kumar Shrivastava and another 1996() MPLJ 339***.

I have given my anxious consideration to the issues raised by both the sides and I am of the opinion that the appellant has no case. It had been proved by the plaintiff that the original allottee Ms. Neelam Wadhwa had executed a GPA in favour of the appellant namely Bharat Bhushan Bansal and it was Bharat Bhushan who had got the property transferred in favour of the plaintiff. The appellant had set up an agreement/settlement said to have arrived at in the presence of the parents. That document was not proved. It was not exhibited and could not be taken note of. An attempt had been by the appellant to lead secondary evidence with respect to it in the suit filed by them. That plea was rejected by the trial Court. The revision filed by him was also dismissed. The High Court in its order dated 03.10.2012 had noted that it was not an agreement and at the most it could be taken as a bid sheet and nothing beyond that. It was noted that there was no recital that Bharat Bhushan Bansal or Satish Kumar Bansal had agreed to the bid. It noted that it did not contain any details i.e. the period when it was to be executed. It was not written by a regular Scribe and there was no date on which the sale deed was to be executed.

The submission on behalf of the respondent was that the signatures of their parents are just below the writing and their signatures could not have been there and had it been an agreement the parties to the agreement would have signed first and then the signatures of the parents and the witnesses should have been taken. It was urged that for the sake of income-tax, the plaintiff was shown to be an employee but they were doing the business together and it was a firm and the defendant had failed to produce the relevant papers and all the documents were in appellant's possession as both of them had parted ways several years ago and some payment was made to settle the business claims. It was urged that a sum of Rs.1,40,000/- had been paid by the respondent and this fact is referred to in the deed and the allotment was transferred by PUDA.

According to the appellant he had purchased the plot and had paid the amount. The best witness would have been Neelam Wadhwa who has not been examined. The title deeds are in the name of the plaintiff namely Satish Kumar Bansal. PUDA had transferred the allotment in favour of Satish Kumar Bansal vide Ex.PW3/4. Neelam Wadhwa had executed a General Power of Attorney Ex.PW2/B in favour of Bharat Bhushan Bansal and it was Bharat Bhushan Bansal who had got the property transferred in favour of the plaintiff. A false plea had been taken by the defendant (appellant). The title vested in the plaintiff. The appellant was to show in what capacity he was occupying the property. Admittedly, both the brothers and the parents were living in this house. The younger brother moved away with his parents. It was the plaintiff who had allowed his brother to live in the house. Admittedly, there is no lease nor any rent deed. It was nothing more than a license, the plaintiff had permitted his brother to occupy the house. The license could be oral. It could even be implied by the relationship. The defendant did not have any right or interest in the property. The suit for mandatory injunction was maintainable. The license had been terminated. A suit for mandatory injunction for delivery of possession could be brought and advalorem Court fee was not payable. The finding recorded by the appellate Court is affirmed. The appeal is dismissed with special cost of Rs.50,000/-.

(ANITA CHAUDHRY)
JUDGE

January 13, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No