

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.6039 of 2016 (O&M)

Date of Decision: 31.07.2017

P.K. Bansal (since deceased)
through his LR's

... Appellants

Versus

Rupesh Monga @ Umesh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. K.K. Goel, Advocate,
for the appellants.

RAJIV NARAIN RAINA, J.

1. The plaintiff presently represented by his legal heirs and representatives filed a civil suit in Faridabad on August 26, 2006 claiming to be absolute lessee in possession of 16 K 19 M of Gair Mumkin Pahar falling in the revenue estate of Village Mangar, Tehsil & District Faridabad. He prayed for a declaratory decree to the effect that the sale deed dated May 13, 1999 was a forged document. The first sale deed was executed by Rupesh Monga Defendant-1 (D-1) in favour of Sheetal Khanna D-2. He also challenged sale deed dated March 16, 2004 executed by Sheetal Khanna D-2 through her GPA Capt. Shakti Lumba the favour of Illa Lumba D-4 wife of Capt. Shakti Lumba. Both the sale deeds were registered before the Sub Registrar Faridabad D-5. The plaintiff claimed that these sale deeds were illegal, ab initio null and void and not binding upon his right, title and interest in the suit land. The suit also contained a prayer for permanent

injunction restraining D-1 to D-4 from interfering in his peaceful possession over the suit property or from dispossessing him or by alienating the suit property by sale, mortgage or transfer any part of the suit property in the Kita, Khewat, Khutoni and Killa as described in the plaint.

2. After exchange of pleadings the material issue which went up for trial was whether plaintiff is absolute lessee and in possession of the gair mumkin pahar suit land and whether the two sale deeds are void. The other four issues were legal issues as to whether the plaintiff is entitled to permanent injunction; whether the suit was not maintainable; whether the plaintiff did not have cause of action to file a suit and whether he had no locus standi. The onus on the first three issues rested on the plaintiff. The suit was dismissed so also the first appeal against which concurrent judgments and decrees, the plaintiffs have approached this Court as appellants.

3. The defendants contested the case urging that the title of the suit property vested in Sheetal Khanna by the first sale deed and then the ownership and possession was transferred to Capt. Shakti Lumba and his wife Illa Lumba D-3 & D-4. Therefore, there was no question of plaintiff being a lessee in possession of the suit land. Even otherwise, the title of the owner is far superior to the title of the lessee.

4. The plaintiff built his case on an agreement to sell the suit property for a sum of ₹1.8 lakh claiming through Rupesh Monga D-1. They objected that plaintiff never brought a suit for possession by way of specific performance of the alleged agreement to sell dated May 07, 1997 in any Court. The alleged contract between the plaintiff and Rupesh Monga was

said to be executed through a General Power of Attorney and an indemnity bond in favour of plaintiff but Rupesh Monga in collusion with Sheetal Khanna executed the sale deed of May 13, 1999.

5. The property had changed hands twice firstly 1999 and then 2004 and mutations were sanctioned in the years in which the sale deeds were registered. Plaintiff alleged fraud in these sale deeds committed upon him in order to deprive his rights as a lessee possessed with an agreement to sell executed between Rupesh Monga D-1 and him. The plaintiff was a property dealer who convinced Rupesh Monga that the land being under constant threat of land and mining mafia operating in District Faridabad and Gurgaon, landowner being an absentee landlord he could if given a General Power of Attorney take care of the land and ensure that no encroachment takes place.

6. Contesting defendants pleaded that Rupesh Monga sold the suit property to Sheetal Khanna having lost faith in the working in the plaintiff after cancelling the General Power of Attorney. The plaintiff died in 2007 within a year of filing of suit. The evidence in court was recorded at the hands of his legal heirs and representatives.

7. The oral evidence of the plaintiff entirely depended on the deposition of PW-2 Rahul Bansal son of the plaintiff. He admitted that there is no farm house or construction or cultivation over the suit land in which bushes and wild grass grow. He admitted that his father did not file any suit on the basis of the deed dated May 07, 1997. Both the sale deeds constitute one parcel of land. The defendants produced several witnesses for recording their oral depositions which were in their favour on all material and relevant

points in issue.

8. Presently, there is a construction and a school running in the suit property and some part of the land is under cultivation as testified by DW-5 Jeet Ram, revenue employee. DW-5 stated that he had seen Illa Lumba in physical possession of the suit land since the last ten years and she runs a school there.

9. The learned Additional District Judge, Faridabad has re-appreciated the evidence and it is not necessary to traverse the findings in any detail since the appeal can be disposed of on the law points discussed and keeping in view the facts and circumstances in which the suit property has been dealt with since the late 1990s.

10. The basis of the claim of the plaintiff has rested on a lease deed and agreement to sell but neither of those documents is entered in any revenue record like Jamabandies and Khasra Girdawaries etc. The learned Additional District Judge has found from the evidence that plaintiffs failed to prove the due execution of the lease deed and agreement to sell by Rupesh Monga D-1 in favour of plaintiff P.K. Bansal by failing to examine any handwriting expert to identify signatures.

11. Plaintiff Rahul Bansal stepping into the shoes of his father admitted that he has not the physical or cultivating possession of the suit land. Neither the plaintiff nor his LRs have ever lodged any criminal case against Rupesh Monga for committing fraud. The First Appellate Court also noticed an important aspect that in neither of those two documents upon which the claim was based is a recital regarding handing over of the physical possession of the suit land to the plaintiff/s.

12. Moreover, there is a finding of fact that Rupesh Monga cancelled the GPA in favour of plaintiff on May 13, 1999, vide cancellation deed Ex.DW-1/C. The subsequent transfers of property were from absolute owner to vendees and the plaintiff could hardly assert even a shadow of right, title or interest in the suit property, whatever its nature might be, agricultural or gair mumkin pahar. There was nothing on record brought by the plaintiff that subsequent purchasers from defendant No.1 were aware of the lease deed dated May 07, 1997 and the agreement to sell of the even date in favour of the original plaintiff late P.K.Bansal.

13. For these reasons, the appeal has been dismissed and rightly so when the plaintiffs have not demonstrated any right in suit land. I support the findings of the Courts below and judgment of the learned Additional District Judge, Faridabad announced on February 25, 2016 dismissing the appeal.

14. I have no reason to disagree in second appeal with the findings of fact recorded in the judgments after analyzing the papers on file. As a matter of fact neither the plaintiffs nor his heirs possess any locus standi to maintain the suit being outsiders with no legal claim on the suit land either as lessees or as holders of an agreement to sell which was not converted into a sale deed. An agreement to sell creates no right in immovable property unless there is an accompanying decree for specific performance compelling conveyance by due execution of a sale deed before the Sub Registrar with stamp duty paid to State. If the original plaintiff did not apply to Court for specific performance of contract for ten years till he died in 2007 his LRs have been rightly shown the door.

15. In view of the above discussion I have hardly any reason to differ with the findings of fact recorded by the first appellate court on the issues resolved, in the second appeal side of this Court.

16. The appeal is devoid of merit and is dismissed at the threshold as no question of law, much substantial, arises which is worthy of admission of the appeal. No costs.

(RAJIV NARAIN RAINA)
JUDGE

31.07.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*