

RSA No. 2261 of 2014(O&M)

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

RSA No. 2261 of 2014(O&M)

Date of Decision: 28.2.2017

Darshan Singh

.....Appellant

Vs.

Roop Lal and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Surjit Singh Swaich, Advocate
for the appellant.

Mr. H.S.Bajwa, Advocate
for respondent No.1.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 16.1.2014 passed by the learned Additional District Judge, whereby first appeal of the plaintiff-respondent No.1 was allowed, decreeing his suit for possession and permanent injunction, defendant No.1 has approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by learned first appellate court in para 2 of its impugned judgment, are that plaintiff was permanent resident of village Chuk Karma Tehsil and District Ropar and postman by profession, at present posted at Chandigarh. Defendant No.2 was the original owner of H. No. 12, Ward No.5, Mundi Kharar, Tehsil Kharar, District SAS Nagar. Plaintiff purchased the house from defendant No.2 for ₹1,20,000/- vide sale

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deed dated 12.6.2009 and possession was delivered to the plaintiff on the said date. Plaintiff was residing at village Chuk Karma, Tehsil and District SAS Nagar, but after 15/20 days he came in the house in suit. In the month of August, 2010, he could not go to this house due to some family problem and taking the benefit, defendant No.1 broke open the lock and took possession of the house unauthorizedly and illegally. When plaintiff came to know, he moved an application on 2.9.2010 to the police against defendant No.1. Defendant No.1 showed the copy of the plaint to SHO Kharar that he had already filed suit for permanent injunction against the original owner defendant No.2 in the present case, pending in the court of Mrs. Shikha Goel, learned Civil Judge (Junior Division), Kharar. Plaintiff requested defendant No.1 to hand over the possession of the house in suit in which he was unauthorized possession, defendant No.1 flatly refused to admit the claim of the plaintiff. On accrual of cause of action, therefore, present suit resulted.

Having been served, defendant No.1 appeared and filed his contesting written statement, raising more than one preliminary objections. Defendant No.2 did not come present and he was proceeded against ex parte. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial court framed the following issues.

1. Whether the plaintiff is entitled for possession of house, fully detailed and described in the headnote of the plaintiff as prayed for?OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP
3. Whether the suit is not maintainable in the present

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form?OPD

4. Whether the plaintiff has suppressed material facts from the court?OPD

5. Whether the plaintiff has no locus standi to file the present suit? OPD

6. Relief?

With a view to prove their respective stands taken, both the parties produced 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 plaintiff has failed to prove his case. Accordingly, his suit for possession and mandatory injunction was dismissed by learned trial court vide judgment and decree dated 30.1.2013. Dissatisfied, plaintiff filed his first appeal which came to be allowed by learned first appellate court vide its impugned judgment and decree dated 16.1.2014. Hence this regular second appeal, at the hands defendant.

Heard learned counsel for the parties.

It has gone undisputed before this Court that suit of the plaintiff for possession and permanent injunction was based on title. Plaintiff sought to draw his title qua the suit property on the basis of sale deed dated 12.6.2009 Ex.P1 for an amount of ₹1,20,000/-. This sale deed was executed in favour of the plaintiff by defendant No.2-Sant Ram. Plaintiff further claimed that he was put into possession by defendant No.2, pursuant to the abovesaid registered sale deed dated 12.6.2009 Ex.P-1. However, taking undue benefit of absence of the plaintiff, defendant No.1 took forcible possession of the suit property. Plaintiff approached the police authorities,

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who advised him to seek his remedy by filing a suit, as the matter was of civil nature.

On the other hand, pleaded and argued case on behalf of defendant no.1-appellant herein was that he had purchased the suit property from defendant No.2 way back in the year 1997 vide receipt dated 15.4.1997, for an amount of ₹4,000/-. However, it is also not in dispute that there was no sale deed executed by defendant No.2 in favour of defendant No.1 either in the year 1997 or later on.

In view of the abovesaid peculiar facts and circumstances of the case, the question that falls for consideration of this Court is, whether the plaintiff was entitled for possession being owner of the suit property on the basis of registered sale deed Ex.P1, as defendant No.1 could not bring on record any document of title.

In view of the law laid down by the Hon'ble Supreme Court in **Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and another, 2012 (1) SCC 656** and **Ram Bilas Ojha and others Vs. Bishwa Muni and others, 1978 AIR (SC) 1094**, it is held that learned first appellate court was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld. It is so said, because neither defendant No.1 was having any registered sale deed in his favour, nor any Will or agreement to sell. Even if there would have been power of attorney, Will or agreement to sell, preference has to be given to the registered sale deed, which was with the plaintiff.

Relevant observations made by the Hon'ble Supreme Court in para 15 to 18 of its judgment in Suraj Lamp's case (supra), which can be gainfully followed in the present case, read as under:-

15. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in **Asha M. Jain v. Canara Bank - 94 (2001) DLT 841**, that the "concept of power of attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of [section 53A](#) of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.

17. It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under Section 53A of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision."

In fact, plaintiff was a bonafide purchaser whereas defendant No.1 was trying to protect his possession on the basis of an alleged unregistered sale. Plaintiff has duly proved his title on the suit property. In this view of the matter, answer to the question posed hereinabove is and has to be in favour of the plaintiff and against the defendant No.1-appellant herein.

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During the course of hearing, learned counsel for the appellant could not substantiate his arguments even after drawing support from the judgment of this Court in **Ude Singh and others Vs. Ram Chander, 2009 (1) RCR (civil) 41**, because the cited judgment has not been found of any help to the appellant, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

It is also the settled proposition of law that presumption of truth would be attached with the registered sale deed. When a registered sale deed and an unregistered sale are the basis of claim of contesting parties to the litigation, preference has to be given to the registered sale deed. Under these circumstances, it can be safely concluded that learned first appellate court has committed no error of law, while passing the impugned judgment and decree which deserve to be upheld, for this reason as well.

Before arriving at its judicious conclusion, learned first appellate court re-considered true facts as well as evidence available on record in the correct perspective. Cogent findings recorded by learned first appellate court in para 16 of the impugned judgment, which deserve to be noticed here, read as under:-

“As far as possession is concerned, though the

appellant/plaintiff alleged that on the date of the execution of the sale deed itself, he took over the possession of the house in dispute, whereas in the month of August, 2010, respondent/defendant No.1 taking the benefit of the absence of the appellant/plaintiff, succeeded in taking the forcible possession by way of breaking open the lock of the house, whereas on the other hand, the own witness of the appellant/plaintiff, PW-2 disclosed during his cross-examination that on 15.4.1997, the house was given to the appellant/defendant No.1 for the purpose of living/use and in this regard an affidavit EX.D-6/Mark-B was produced on record. Though respondent/defendant No.1 had denied his signature on Ex.D-6/Mark-B affidavit dated 15.4.1997, however, respondent/defendant No.2 as PW-2 admitted in his cross-examination that he gave the house for living/use to the respondent/defendant No.1. Therefore, respondent/defendant No.2 indirectly admitted the possession of respondent/defendant No.2 had at the most given right to the respondent/defendant No.2 to use and obtain water/electricity connection in his name. Therefore, even if respondent/defendant No.1 had been issued the bills Ex.D-7 and Ex.D-8, is at the most the result of the right given vide EX.D-05/Mark-B. Furthermore, at the most the respondent/defendant No.1 can be termed to be licensee of respondent/defendant No.1. The real owner of the house in dispute bearing No.12 is the appellant/plaintiff vide sale deed Ex.P-1. Therefore, certainly the owner is entitled to possession. There is no limitation period for filing suit for possession on the basis of the title as is held in ruling: Gursharan Kaur Vs. Kuldeep Kaur & Anr reported in 2011 (3) Civil Court Cases 176 (P&H). As such, appellant/plaintiff is held entitled to possession of House No.12, the

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*boundaries of which are detailed in the sale deed
Ex.P1/stie plan.”*

Learned counsel for the appellant failed to point out any patent illegality or perversity in the abovesaid findings recorded by the learned first appellate court, which have been found based on sound reasons. He also could not point out any question of law much less substantial question of law, which is sine qua non for entertaining a 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 judgments of the Hon’ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. 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 misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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

28.2.2017
Ak Sharma

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