

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

RSA-6758-2016(O&M)

Date of Decision:17.07.2017

Harbans Kaur and another

.....Appellants

Versus

Ranjit Kaur and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Rajiv Kataria, Advocate,
for the appellants.

RAMESHWAR SINGH MALIK, J.(Oral)

Instant regular second appeal, at the hands of defendants, is directed against the concurrent findings of facts recorded by both the learned courts below, whereby suit for possession filed by the plaintiffs-respondents on the basis of title, was decreed against the defendants-appellants by the learned trial court vide its impugned judgment and decree dated 19.08.2015 and first appeal of the defendants also came to be dismissed by the learned District Judge vide his impugned judgment and decree dated 22.01.2016.

Brief facts of the case, as noticed by the learned trial court in para 1 of its impugned judgment, are that as per averments made by the plaintiffs, originally 01 Kanal 10 Marlas of land was owned and possessed by Gurdev Singh. He had purchased it, vide registered sale deed dated 3.2.1984. Mutation of that was duly incorporated in revenue record. He sold 15 Marlas of land out of that to Gurmail Singh on 29.9.2011. He was

left behind with about 14 Marlas of land, which was the suit property. He died on 23.1.1999. Plaintiffs were his legal heirs. Gurdev Singh did not execute any will or any other testament in favour of anybody. He had constructed a house in this land. Defendants, who were the brothers and nephews of Gurdev Singh, were given permissive possession of this property. He had requested them to vacate possession, but without any result. Defendants were in illegal and unauthorized possession of the property. After death of Gurdev Singh, plaintiffs were requesting the defendants to vacate the property. However, a week back they had flatly refused.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether plaintiffs are entitled for decree of possession of the house in dispute, as prayed for? OPP*
- 2. Whether suit of the plaintiffs is not maintainable in the present form? OPD*
- 3. Whether plaintiffs have no locus standi to file the present suit? OPD*
- 4. Whether the plaintiff have not come to the Court with clean hands and have concealed material facts from the Court? OPD*
- 5. 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 plaintiffs have duly proved their case for possession on

the basis of title. Accordingly, their suit was decreed by the learned trial court vide its impugned judgment and decree dated 19.08.2015. First appeal filed by the defendants also came to be dismissed by the learned first appellate court vide its impugned judgment and decree dated 22.01.2016. Hence, this regular second appeal, at the hands of unsuccessful defendants.

Heard learned counsel for the appellants.

Ownership of the plaintiffs over the suit land had never been in dispute. Defendants-appellants, as per their own pleaded case, came in possession over the suit land pursuant to agreement to sell dated 19.04.1989. It is also a matter of record that on the strength of agreement to sell dated 19.04.1989, allegedly executed between the parties, defendants-appellants never filed any suit for possession by way of specific performance of abovesaid agreement to sell. It would also make it crystal clear that the defendants never tried to impress upon the plaintiffs to get the sale-deed executed in compliance of the agreement to sell dated 19.04.1989, meaning thereby, defendants were not even ready and willing to perform their part of the contract. Having said that, this Court feels no hesitation to conclude that 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 counsel for the appellants could not dispute this settled proposition of law that mere agreement to sell will not confer any title on the defendants-appellants. They had an opportunity to file a suit for possession by way of specific performance of agreement to sell under the relevant provisions of Specific Relief Act. However, they did not avail said opportunity and that too for no good reasons. In such a situation,

possession of the appellants would be only permissive possession and any length of such permissive possession will not confer any kind of right in their favour.

Suit for possession filed by the plaintiffs-respondents on the basis of title was rightly decreed by both the learned courts below. Further, neither the defendants-appellants filed any counter-claim nor they set-up any plea of adverse possession, for the reasons best known to them. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at his judicious conclusion, the learned District Judge has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 17 of its impugned judgment, which deserve to be noticed here, read as under:-

“It is not disputed between the parties that originally Gurdev Singh was owner of land measuring 1 kanal 10 marlas. The plaintiffs claim the suit property on the basis of natural succession being the only legal heirs of deceased Gurdev Singh. According to the plaintiff, Gurdev Singh, during his life time has sold 15 marlas of land to Gurmail Singh out of the total land. The defendants have admitted the ownership of Gurdev Singh deceased over the land in question. Gamdoor Singh defendant claims to have purchased land measuring 15 marlas, vide an agreement to sell and in part performance of the agreement to sell, the defendants were delivered possession of the said land. The

plaintiffs have proved on the record jamabandi Ex. P4, which contains a recital regarding sanction of mutation No.8318 on the basis of sale of land measuring 15 marlas by Gurdev Singh in favour of Gurmail Singh. Presumption of truth is attached to the entries in the jamabandi, unless the same is rebutted. In the case in hand, the defendants have not been able to rebut the same . The defendants have set up an agreement to sell dated 19.4.1989 Ex. D4, but the same has not been proved, in accordance with the provisions of law. Neither the attesting witnesses, nor the scribe of the agreement Ex.D4 have been examined by the defendants, for the reasons best known to them. They have simply produced this agreement Ex. D4 on the record, which itself , unless proved as per the provisions of law, is not sufficient to establish the claim of the defendants Even if, for the sake of arguments this agreement is taken into consideration, even then, it does not substantiate the claim of the defendants. As per the recitals made in Ex. D4, the sale deed was to be executed on 15.7.1989 and the remaining sale consideration of Rs.5000/ was to be paid on that date It has not been explained by the defendants that whether the remaining sale consideration was paid or not and if they had paid the same, then why they did not get executed and registered the sale deed. No suit for specific performance of the said agreement has been filed by the defendants and no reason for the same has been assigned. The defendants have claimed the protection of their possession under section 53-A of Transfer of Property Act, but due to their conduct, they are estopped from taking the protection of section 53 -A of the ibid Act. They could have protected their possession by filing a suit for permanent injunction on the basis of the aforesaid agreement, in the eventuality of failure of the vendor to execute the sale deed. Protection u/s 53-A of the ibid Act is available only when the possession has been delivered in part performance of

the agreement to sell and it is applicable only against the transferee, who commits breach of the agreement. It is a personal right and liability between proposed vendor and vendee between whom there is a privity of contract and not any third party having no privity of contract. The necessary conditions for invoking the provisions of section 53-A of the ibid Act, there must be a written contract between the parties and transferee must have taken some steps in furtherance of the contract. He must have been ready and willing to perform his part of the contract, but in the case in hand, the defendants have failed to prove the same. Further more, mere agreement to sell does not confer any title upon the vendee. The facts of the authorities cited by the learned counsel for the appellants-defendants are distinguishable from the facts of the case in hand. At this stage, it is necessary to make a reference to the cross examination of Gurjant Singh defendant and the witnesses examined by them. Gurjant Singh defendant while appearing as DW2 has admitted in his cross examination that they do not have any title deed, except the agreement Ex.D4. He has also admitted that they never filed any suit for specific performance on the basis of this agreement. DW1 Makhan Singh has admitted that he has not seen any title deed in favour of the defendants. He has also expressed his ignorance, if sale deed has been executed on the basis of the agreement or not. He has also deposed that he does not know the terms of the agreement. Further, the testimony of DW3 Barinder Kaur is also not helpful to the defendants. She is the wife of plaintiff Jagtar Singh. She has admitted in her cross examination that her divorce case with Jagtar Singh is pending in the Court at Bathinda. Thus, it was obvious for her to depose against the plaintiffs. She has admitted in her cross examination that before her marriage, she did not go to village Sander Jatana. She has also expressed her ignorance, as to who had scribed the

agreement and what were the conditions of the same. She has also showed her ignorance if the sale deed has been executed or not. In these circumstances, the testimony of this witness is also not of any help to the defendants . In the light of the above discussed evidence, I am of the considered opinion that the defendants have not been able to establish the agreement in their favour, nor they are entitled to the protection under section 53 -A of the Transfer of Property Act, on the basis of the agreement in question. Admittedly, Gurdev Singh was the owner of the property and the plaintiffs are his legal heirs and, as such, they are entitled to take back the possession of the suit property. Thus, the findings recorded by the learned Trial Court on all the issues are well reasoned and based on law and facts as well as evidence led on the record and, as such, the same deserve to be affirmed.”

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. 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.

July 17, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

CM-17624-25-C-2016 IN RSA-6758-2016

**Harbans Kaur and another
Versus
Ranjit Kaur and others**

Present: Mr.Rajiv Kataria, Advocate,
for the applicants-appellants.

CM-17624-C-2016

Applicants seek exemption from filing the certified/taped copies of judgment and decree dated 19.08.2015.

Application is allowed, as prayed for. Exemption sought is granted.

C.M. stands disposed of.

CM-17625-C-2016

Applicants seek condonation of delay of 160 days in re-filing the appeal.

After hearing the learned counsel for the applicants-appellants, instant application is allowed, for the reasons stated therein. Delay of 160 days in re-filing the appeal is condoned.

C.M. stands disposed of.

July 17, 2017
seema

**(RAMESHWAR SINGH MALIK)
JUDGE**