

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

RSA No.74 of 2016 (O&M).
Decided on:-January 20, 2017.

Ramesh Chander Batra.

.....Appellant.

Versus

Tarloki Nath Lama and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Lovkesh Gupta, Advocate
for the appellant.

HARI PAL VERMA, J.

The appellant-defendant No.2 has filed the present regular second appeal against the judgment and decree dated 16.09.2015 passed by learned Additional District Judge, Jalandhar whereby his appeal filed against the judgment and decree dated 07.10.2013 passed by learned Civil Judge (Junior Division), Jalandhar, was dismissed.

Briefly stated, respondent No.1-plaintiff Tarloki Nath Lama has filed a suit for declaration, permanent injunction and mandatory injunction qua the suit property as detailed in the plaint. As per the plaint, the respondent No.1-plaintiff and respondent No.2-defendant No.1, namely, Anand Kumar Lama are real brothers. The suit property has come to them from their father Roshan Lal Lama, to whom the property was earlier gifted

by one Durga Dutt, the grandfather of plaintiff and defendant No.1. Said Durga Dutt had also gifted the property i.e. ND-51, Bikrampura, Jalandhar to both his grandsons i.e. the plaintiff and defendant No.1 vide registered Will dated 21.12.1972. Thus, the plaintiff and defendant No.1 were the owners of the properties at the time of death of their father Roshan Lal Lama. The plaintiff and defendant No.1 have already partitioned both the properties in such a manner that that defendant no.1 has become exclusive owner of the property i.e. ND-51, Bikrampura, Jalandhar, whereas, defendant No.1 has retained one shop measuring 6'-9" x 27' along with roof upto municipal limits in ND-131, Mai Hiran Gate, Bikrampura, Jalandhar. Rest of the double storied building of ND-131 fell to the share of respondent-plaintiff.

Since the partition of the properties, the plaintiff and defendant No.1 are in possession of their respective portions as per the partition and even a written agreement was executed in this respect between them. The defendant No.1 wanted to alienate the property i.e. ND-51 and for that, certain formalities were required to be performed. Therefore, defendant No.1 served a legal notice dated 20.11.2001 upon the plaintiff for production of the copy of the agreement dated 1.9.1975. Thereafter the plaintiff and defendant No.1 admitted the contents of the agreement. Defendant No.1 even detailed the terms of agreement in his own hand whereby he admitted that the partition has already been effected between the plaintiff and defendant No.1. The plaintiff and defendant No.1 even exchanged the affidavits with each other to this effect and certain additions were also made

in the agreement dated 17.1.1976.

The appellant-defendant No.2 is a tenant of defendant No.1 and is in possession of the shop, shown in green colour in the site plan upto the roof level. The defendant No.2 even raised a second floor claiming that he got it sanctioned from defendant No.1. However, when the defendant No.1 served the notice upon the plaintiff on 20.11.2001, it is only at that time, it was revealed that the defendant No.1 had already sold his share in property i.e. ND-131 shop measuring 6'-9"x 27' up to municipal limits. However, the plaintiff did not suspect any foul play on the part of defendant No.1. But thereafter, the defendant No.2 demolished the part of the property in his possession and started reconstructing the same along with the adjoining property on the eastern side. He also removed the intervening wall between the eastern side shop and the shop shown in green colour in the site plan. The intervening wall measuring 13" and part of it is 9", exclusively belongs to the plaintiff. But the defendant No.2 had erected separate pillars and shutters and started demolishing the construction of the shop and the building on the eastern side in such a manner that the walls of the plaintiff had developed cracks and accordingly damaged the said property.

When the respondent No.1-plaintiff objected against demolition and the reconstruction, resulting into the damage of his property, the appellant-defendant No.2 had shown a photocopy of the sale deed dated 23.7.1992 and claimed that he has purchased more than the actual area of shop. The plaintiff was shocked to read the contents of the sale deed which the defendant No.1 had allegedly executed in favour of defendant No.2

beyond his share. The said sale deed is a product of collusion between the defendants No.1 and 2. The defendant No.1 is completely precluded from making any sale of the property more than his ownership which is to the extent of 6'-9" x 27'. The sale deed which is beyond the said dimensions is null and void. The defendant No.1 has threatened to demolish the property and to raise the lintel of first and second floor by adjoining the property in a single unit which would result into excessive load on the adjoining wall of the plaintiff and shall result into damaging and demolishing the property of the plaintiff. The defendant No.2 has raised further construction and completed the same during the pendency of the suit. The defendants were asked many times to admit the claim of plaintiff and not to proceed in such a manner which led to filing of the present suit.

On notice of the suit having been issued, the respondent No.2-defendant No.1 Anand Kumar Lama has filed written statement taking preliminary objections that suit of the plaintiff lacks maintainability and locus standi. On merits, inter-se relation between the plaintiff and defendant No.1 is not disputed.

The appellant-defendant No.2 has also filed his written statement taking preliminary objections that the plaintiff is estopped by his own act and conduct. Rather, the suit was termed to be collusive between the plaintiff and defendant No.1, who are otherwise real brothers. The suit is not properly valued and the defendant No.2 is bonafide purchaser for valuable consideration. The sale is made by defendant No.1 in favour of defendant No.2 vide sale deed dated 23.07.1992, which is protected under the law.

The plaintiff filed replication to the written statement of defendant No.2 wherein the averments made by defendant No.2 were denied and the version of plaintiff was reiterated. On the basis of pleadings of the parties, following issues were formulated by the trial Court:

1. Whether plaintiff is entitled to the relief of declaration that he is exclusive owner in possession of major portion of suit property No.131 Mai Hiran Gate, Bikrampur, Jalandhar? OPP
2. Whether plaintiff is entitled to the declaration that the sale deed dated 23.7.1992 is null and void? OPP
3. Whether plaintiff is entitled to the relief of permanent injunction restraining the defendant No.2 from raising any construction or demolishing any portion of the suit property as shown in the site plan? OPP
4. Whether plaintiff is entitled to the relief of permanent injunction for restraining the defendant from alienating or creating any charge on the suit property on the basis of the sale deed dated 23.7.1992? OPP
5. Whether the plaintiff is entitled to the mandatory injunction as prayed for? OPP
6. Whether suit of the plaintiff is within time? OPP
7. Whether suit is not properly valued for the purpose of Court fee and jurisdiction? OPD
8. Whether defendant No.2 is bonafide purchaser for valuable consideration without notice of the alleged rights of the plaintiff in the suit property? OPD
9. Relief.

Learned trial Court vide judgment and decree dated 07.10.2013 has decreed the suit of respondent No.1-plaintiff to the effect that the plaintiff is declared to be exclusive owner in possession of the major portion

of ND-131, Mai Hiran Gate, Bikrampura, Jalandhar. It was also declared that the sale deed dated 23.07.1992 allegedly executed by respondent No.2-defendant No.1 in favour of appellant-defendant No.2 is illegal and unlawful to any extent beyond 6'-9" x 27'. Further, the defendant No.2 is permanently restrained from raising any construction or further construction which may result in damaging or demolishing any construction of the plaintiff. Relief of mandatory injunction was also granted for removal of the construction raised by the appellant-defendant No.2 illegally and unlawfully which has caused damage to the building of respondent No.1-plaintiff and removal of the Malba thereof.

Aggrieved against the aforesaid judgment and decree, the appellant-defendant No.2 filed an appeal before the lower appellate Court. But the same was also dismissed by learned Additional District Judge, Jalandhar vide judgment and decree dated 16.09.2015.

It is in the aforesaid circumstances, the appellant-defendant No.2 has filed the present regular second appeal. He has formulated the following substantial questions of law:

- i. Whether both the learned Courts below rightly appreciated the evidence on the record?
- ii. Whether the suit is barred by the limitation?
- iii. Whether the appellant being the bonafide purchaser is entitled to protect his right?

Learned counsel for the appellant-defendant No.2 has argued that there was never a partition between the respondent No.1-plaintiff and the appellant-defendant No.2 with regard to property No.ND-51 and ND-131

It is wrong that in the alleged partition, the respondent No.2-defendant No.1 retained only one shop measuring 6'-9" x 27' of the property bearing No.ND-131 situated in the area of Mai Hiran Gate, Jalandhar. The alleged agreement is nothing but a deed of partition. The agreement ought to have been executed on a stamp paper. Without registration, such document neither creates nor extinguishes any right on the property. The appellant-defendant No.2 was a tenant under the respondent No.1-defendant No.1 and was in possession of the shop as shown in green colour in the site plan upto the roof level. The respondent No.2-defendant No.1 in the capacity of owner had leased out the shop as shown in green colour in the site plan attached with the written statement of appellant-defendant No.2 on the basis of rent note dated 27.9.1981. The defendant No.1 as owner had let out the shop measuring 7'-2" x 6'-9" excluding the width of the walls. Before sale, the defendant No.1 had also himself got the plan prepared of the property to be sold under his signatures. It is only after purchasing the adjoining property on eastern side, the appellant-defendant No.2 removed the intervening wall between two properties in the year 1997.

I have heard learned counsel for the appellant-defendant No.2 and perused the impugned judgments passed by the Courts below.

The findings recorded by the Courts below which are concurrent in nature do not warrant any interference. The respondent No.1-plaintiff has been able to prove that he is in exclusive owner in possession of the major portion of ND-131, Mai Hiran Gate, Bikrampur, Jalandhar which is shown in red colour in the site plan and fully detailed and described in the

head note of the plaint. The sale deed executed by defendant No.1 in favour of the appellant-defendant No.2 was held to be void ab-initio and unlawful to any extent beyond 6'-9"x 27'.

Vide order dated 1.4.2006 passed by learned Civil Judge (Junior Division), Jalandhar, Mr. Parmod Bhardwaj was appointed as Local Commissioner with a direction to inspect the demised building and to report with regard to the old and fresh construction. He was also directed to report regarding the actual and factual position as well as the nature of construction and the damage caused to the walls. Pursuantly, he has submitted a report that the roof over the separately purchased portion is laid on the eastern side wall of the respondent No.1-plaintiff, which is separately and exclusively owned by the respondent No.1-plaintiff. The wall on the said portion is separately constructed by defendant No.2. The Duct Ala shown in the wall of the respondent No.1-plaintiff is a new one, inserted into the wall of respondent No.1-plaintiff at a later stage. The inspection further suggests that the roof on the first floor and the load of second floor is also put on the walls of respondent No.1-plaintiff which caused cracks on the side wall of respondent No.1-plaintiff which could apparently be seen in the photographs. It has also been reported that there were cracks all over the wall of the plaintiff because of the overloading of the main load bearing wall.

The respondent No.1-plaintiff has proved that he is exclusive owner in possession of the major portion of ND-131, Mai Hiran Gate, Bikrampur, Jalandhar as detailed in the head note of the plaint. Therefore,

the sale deed executed by defendant No.1 in favour of defendant No.2 on 22.07.1992 and executed on 23.07.1992 is liable to be declared as null and void as defendant No.1 cannot execute the sale deed beyond his ownership i.e. beyond 6'-9" x 27'.

In the case in hand, the respondent No.1-plaintiff is not acquiring any interest in the said property by way of any transaction which has taken place at a subsequent stage. Rather, he is only challenging the competence of the vendor i.e. respondent No.2-defendant No.1 as no one can transfer a better title than one himself possesses. Since the respondent No.2-defendant No.1 did not possess a better title, he cannot pass the same.

Accordingly, this Court finds that no substantial question of law arises in the present regular second appeal. There is no illegality or perversity in the impugned judgments and decrees passed by the Courts below and the same are upheld. The present appeal is, consequently, dismissed.

January 20, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No