

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

RSA No.6185 of 2015 (O&M).

Decided on:-April 27, 2017.

Samuel Luke.

.....Appellant.

Versus

Nathanianl Luke and others

.....Respondents.

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

Present:- Mr. Jatinder Kumar Kamboj, Advocate
for the appellant.

HARI PAL VERMA, J.

The appellant-defendant No.1 has filed the present regular second appeal against the judgment and decree dated 10.09.2015 passed by learned Additional District Judge, Karnal whereby his appeal against the judgment and decree dated 24.05.2012 passed by learned Civil Judge (Junior Division), Karnal, was dismissed.

Briefly stated, the respondent No.1-plaintiff has filed a suit for possession by way of mandatory injunction regarding plot No.21 situated in Ward No.2, Nilokheri, District Karnal. The plaintiff and defendants are real brothers. The plaintiff is working in Libya and often comes to India after 2 or 3 years. The plot No.21 was purchased by him vide registered sale deed No.2131/1 dated 30.01.1987. The plaintiff appointed his elder brother

Samuel Luke i.e. defendant No.1 as his special power of attorney to deal with the sanction of the site plan with the Municipal Committee to get the water/sewerage connection and to sign the documents on his behalf. Since the plaintiff being abroad was not in a position to look after the construction work of the plot, he used to send payment regularly through cheques to the defendant No.1 for construction of the plot. The details of payment from time to time have been reproduced in para No.2 of the judgment passed by the trial Court.

The construction of the suit property was completed in the year 1990 and the plaintiff allowed his three brothers i.e. the defendants and his mother to live in the said house as licensee. However, after some time, the wife and children of the plaintiff shifted to India and started living in Karnal in the year 1998. In the year 2005, the defendants started quarrelling with the wife and children of the plaintiff so as to grab the property in question. On 03.03.2005, the defendant No.2 had voluntarily given an affidavit in favour of the plaintiff regarding the filing of false case by defendant No.1 against the wife of the plaintiff. The defendant No.1 had filed a false civil suit against the wife of the plaintiff and intentionally not pleaded the plaintiff as a party in the said case.

The plaintiff requested the defendants to vacate the house in dispute, but the defendant No.1 threatened him and his sons that in case the plaintiff would file any proceedings of ejectment against the defendants, then he would manage to kill the family of the plaintiff. Accordingly, vide legal notice dated 21.10.2005, the plaintiff terminated the licence and asked

the defendants No.1 and 2 to vacate the house in question. However, when the notice dated 21.10.2005 issued by the plaintiff was received by the defendants on 24.10.2005 and 26.10.2005, the defendants approached the relatives and friends to pressurise the plaintiff to give 3-4 years' time to the defendants, to vacate the house so that defendants could construct their own house. On 11.05.2009 when the plaintiffs came to India and after about 3 days, the defendants came to the house of the plaintiff at Karnal and rather, threatened the plaintiff that they would not vacate the house. They also threatened the plaintiff to leave any interest in the house in question. After the death of mother of the plaintiff and defendants, the defendants became more aggressive towards the plaintiff. Hence, the present suit was filed.

On notice having been issued to the defendants, they appeared and filed their written statements. The defendant No.1 in his written statement has taken various preliminary objections regarding maintainability, locus standi, cause of action, non-joinder and mis-joinder of necessary parties, suit barred by limitation, suppression of material facts and *ad valorem* court fee. On merits, it has been pleaded that the father of the defendants, namely, Luke Masih expired on 05.06.1974 leaving behind the defendants and other legal heirs. After the death of their father, the entire family was fully dependent on the defendant No.1 being the eldest male member in the family. The mother of the parties died on 08.11.2003, who was residing with the defendant No.1 along with other legal heirs. The defendant No.1 being the eldest son in the family looked after and settled the other members of the family. He provided education to the plaintiff, sent him

abroad and got him settled in Libya. The defendant No.1 had purchased the plot in dispute on 30.01.1987 from Ram Kishan son of Moti Ram and Lal Chand son of Ram Chand and had paid Rs.25,000/- to the plaintiff to get executed and registered the sale deed in favour defendant No.1, as he had to go somewhere else due to some unavoidable household work. After registration of the sale deed, the plaintiff informed the defendant No.1 that he had got the sale deed of the plot registered in his favour, as the presence of the purchaser was necessary to sign before the Sub-Registrar. Since the defendant No.1 was not present, there was no alternative except to get the sale deed registered in favour of the plaintiff.

The defendant No.1 further pleaded that he has raised construction over the plot in dispute from his own resources. He applied for the water connection in the year 1987 and since then, he has been regularly depositing the water bills. Similarly, he applied for the electricity connection on 16.05.1997 after depositing the security amount of Rs.635/- vide book No.100 and receipt No.1991. The money sent by the plaintiff was used for construction of some other house situated in Sector 6, Karnal. Thus, denying all the allegations, the defendant No.1 has prayed for dismissal of the suit.

Separate written statement was filed by defendants No.2 and 3 taking various preliminary objections. On merits, it was admitted that the plaintiff is the registered owner of the plot in dispute. After the death of father of the parties, the mother of the parties wanted to remain secure and, therefore, she purchased the property in dispute in the name of the plaintiff as he was the earning member of the family. After construction of the plot by

the mother of the parties, she settled the defendants No.1 to 3 with her in the said house at Nilokheri. It was mother of the parties who constructed the house in dispute, after obtaining small amount from the plaintiff and she spent the remaining amount from the pension account of her husband.

On the basis of pleadings of the parties, the trial Court formulated the following issues:

1. Whether the plaintiff is entitled to possession by way of mandatory injunction of plot No.21, Ward No.2, Nilokheri, District Karnal, as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable in its present form? OPD
3. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
4. Whether the suit of the plaintiff is bad for non-joinder of necessary parties? OPD
5. Whether the suit of the plaintiff is barred by limitation? OPD
6. Whether the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction? OPD
7. Relief.

After appreciating the entire evidence on file and considering the sale deed in the name of the plaintiff, the trial Court found that there is a strong presumption attached in the case that the property in dispute belongs to the plaintiff. The onus was on the defendants to prove their stand. The defendant No.1 has pleaded that the property in dispute belongs to him, but his plea was found flimsy and away from reality, because the defendant No.1 has not led any evidence to prove that he was actually not available on the

day of execution and registration of the sale deed. The only evidence led by defendant No.1 in support of his stand, were the statements of Samuel Luke DW1, Daniel Luke DW2, Asha DW2 (wrongly number) and Selvestor Gaberial DW3. But the testimony of these witnesses was not found enough to ignore the registered sale deed executed in favour of the plaintiff.

The trial Court found that due to his non-availability, the defendant No.1 did not object to the proclamation of the plaintiff that he is the exclusive owner of the plot in dispute at the time of execution of his power of attorney. Admittedly, the plaintiff has given a power of attorney Ex.P1 to the defendant No.1. In the said power of attorney, it has been maintained by the plaintiff that he is the exclusive owner of the property in dispute. Pursuant to the power of attorney so executed, the defendant No.1 has done all the activities with regard to the plot in dispute. Therefore, the defendant No.1 has virtually accepted the sale deed executed in favour of the plaintiff. Further, even after the execution of the sale deed, no efforts were made by the defendant No.1 to get the property transferred in his name. Thus, inaction on the part of the defendant No.1 clearly goes to show that the property in dispute, actually belongs to the plaintiff. In this manner, vide judgment and decree dated 24.05.2012, the trial Court while decreeing the suit filed by the plaintiff has directed the defendants to hand over the vacant possession of the house in dispute to the plaintiff within two months from the date of pronouncement of the judgment.

Aggrieved against the aforesaid judgment and decree dated 24.05.2012 passed by the trial Court, the appellant-defendant No.1 preferred

an appeal before the lower appellate Court. However, the appeal has also been dismissed by learned Additional District Judge, Karnal vide judgment and decree dated 10.09.2015.

It is in these circumstances, the appellant-defendant No.1 has filed the present regular second appeal.

Following substantial questions of law have been raised by the appellant-plaintiff:

- i. Whether the learned Courts below are justified in allowing the suit of the plaintiff and dismissing the appeal of the appellant in view of the facts and circumstances of the case?
- ii. Whether the learned Courts below are justified in appreciating the evidence led by the appellant?

Learned counsel for the appellant-defendant No.1 has argued that findings of both the Courts below on various issues decided against the appellant are manifestly wrong and, therefore, are liable to be reversed. The property in question was purchased out of the funds of defendant No.1, but on account of some unavoidable circumstances, he was not present at the time of execution of the sale deed in his name and had, rather, asked his younger brother i.e. the plaintiff to get the sale deed executed. But instead of getting the sale deed executed in favour of the appellant-defendant No.1, the respondent-plaintiff got the same executed and registered in his own name on the pretext that the presence of purchaser was mandatory at that time. The suit filed by the plaintiff was liable to be dismissed on account of mis-statement/concealment of facts. The plaintiff has filed an affidavit wherein he has declared that except plot No.1377, Sector-6, Karnal, he is not having

any property in his name. Therefore, it is an admission on the part of the plaintiff that he was not the owner of the plot in question. But this fact has not been considered by the Courts below. The plaintiff has failed to prove that he ever sent any money to the appellant-defendant for raising construction over the plot in dispute. Thus, a wrong finding has been recorded by the Courts below which is liable to be reversed.

I have heard learned counsel for the appellant-defendant No.1.

In para No.2 of the judgment passed by learned trial Court, details of the payment which were made to the defendants and their mother are given. There is no dispute that the house in question was purchased vide sale deed dated 30.01.1987 Ex.P15. The sale deed is in the name of the respondent-plaintiff which attaches a strong presumption that the property in dispute belongs to the plaintiff. Therefore, it was for the defendant No.1 to prove his case so as to non-suit the respondent-plaintiff.

The very stand of the appellant-defendant No.1 that the property in dispute belongs to him, was not accepted by the Courts below because the defendant No.1 has failed to lead any evidence to prove that he was actually not available on the date of execution of the sale deed. There is no material on record to suggest that due to non-availability of defendant No.1, the sale deed was executed in favour of the plaintiff. Even otherwise, in power of attorney Ex.P1, which was given by the plaintiff to defendant No.1, it has been maintained by the plaintiff that he is the exclusive owner of the property in dispute. Acting on this power of attorney, the defendant No.1 has carried out all the activities with regard to the plot in dispute. Despite such

writing on the power of attorney, the defendant No.1 did not raise any objection to this proclamation of the plaintiff that he is exclusive owner of the plot in dispute. Even if it is presumed that the appellant was not actually available on the date of execution of the sale deed, even then, the option of extending the date of sale was always available with the defendant No.1. After the execution of the sale deed, the defendant No.1 has not made any effort to get back the property transferred in his name. This conduct/ inaction on the part of defendant No.1 is sufficient to establish that the property in dispute which was otherwise transferred in the name of the plaintiff actually belongs to the plaintiff.

So far as the argument as raised by learned counsel for the appellant-defendant No.1 that the respondent-plaintiff has filed an affidavit wherein he has declared that except plot No.1377, Sector-6, Karnal, he has no other property in his name is concerned, the same cannot be accepted as merely because he has filed such an affidavit, it cannot be said that he is not the owner of the property in dispute particularly when there is a sale deed dated 30.01.1987 Ex.P15 in his favour regarding the house in dispute. Moreover, the plaintiff has nowhere stated that the property in dispute is a joint Hindu family property. For furnishing such an affidavit by the plaintiff, the defendant No.1 may have a different remedy available with him, but it does not mean that the property in dispute is not owned by the plaintiff when there is a sale deed executed in favour of the plaintiff.

No other point was argued.

Since the controversy involved in the case has duly been

considered by the Courts below, no substantial question of law arises in the present regular second appeal.

Thus, affirming the impugned judgments and decrees passed by learned Courts below, the present regular second appeal is dismissed.

April 27, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No