

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

RSA No. 893 of 2015 (O&M)

Date of Decision:- 20.01.2017

Basant Kaur

....Appellant

vs.

Akki alias Basant Kaur

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. G.S. Nahel, Advocate,
for the appellant.

DAYA CHAUDHARY, J. (Oral)

This is the regular second appeal filed by defendant-appellant-Basant Kaur for setting aside impugned judgment and decree dated 13.12.2011 passed by the trial Court as well as judgment and decree dated 6.1.2015 passed by the Additional District Judge, Sangrur.

Briefly, the facts of the case as mentioned in the appeal are that plaintiff-respondents filed a suit against the defendant-appellant for a decree of possession on the grounds that plaintiff No. 1 along with her brother Telu Ram and sister Seeto alias Surjit Kaur were owners of the suit property. Telu Ram and Seeto alias Surjit Kaur have expired and plaintiffs No. 2 and 7 are their legal heirs and they entered into footsteps of Telu Ram and Seeto alias Surjit Kaur and now the plaintiffs have become the owners of the suit property at the spot. The defendants have no right, title or

interest with the suit property in any manner. The property of the defendants is adjoining to the suit property and they were threatening to encroach upon the suit property and raised construction over the suit property forcibly, due to which the suit for permanent injunction was filed against the defendants. Said suit was already pending before the Civil Judge (Jr. Division), Dhuri. During pendency of the suit, the defendants forcibly encroached upon the suit property and raised a wall and entered into illegal possession of the suit property at the spot, due to which said suit for permanent injunction was dismissed as infructuous and as such, plaintiffs filed a suit for possession and defendants were requested to hand over the vacant possession of the suit property to the plaintiffs but to no effect.

Upon notice, defendants filed written statement and legal objections regarding maintainability of the suit, concealment of real facts were raised. The trial Court framed the following issues:-

- “1. Whether the plaintiffs are entitled to the decree of possession of the property as detailed in amended head note of plaint? OPP
2. Whether the plaintiffs have not come to the Court with clean hands and have concealed material facts from the Court ? OPD
3. Whether the suit is not maintainable ? OPD
4. Whether the plaintiffs are estopped by their act and conduct from filing the present suit ? OPD
5. Relief.”

The suit of the plaintiffs was decreed by holding that the plaintiffs were entitled to possession of the suit property and defendants were directed to hand over the vacant possession of the suit property to the plaintiffs within a period of three months from the date of judgment.

Aggrieved by the judgment of the trial Court, defendants Ajaib Singh and Basant Kaur filed appeal before the Additional District Judge, Sangrur. The appeal was dismissed and judgment of the trial Court was upheld.

After losing before the Courts below i.e. trial Court as well as lower Appellate Court, appellant-Basant Kaur has approached this Court by way of filing regular second appeal by raising various grounds.

Learned counsel for the appellant submits that both the Courts below have not appreciated the oral as well as documentary evidence available on the record. The judgments of both the Courts below are based on non-appreciation of evidence. Learned counsel also submits that the trial Court has wrongly recorded in its judgment that sale deed dated 29.11.1967 was not proved whereas Parkash Chand had duly scribed the sale deed. The attesting witnesses have already expired. It is also the argument of learned counsel for the appellant that plea of adverse possession was also not taken into consideration. The appellant-defendant examined DW-1 Kashmir Singh Dhindsa, Approved Draftsman, who had tendered into evidence his affidavit as Exhibit DW-1/A wherein he has deposed that map dated 23.11.2011 was prepared by him at the instance of Ajaib Singh after inspecting the spot. He identified his stamp and signatures on the same.

He had also approved the map as Exhibit D-1. At the end, learned counsel

for the appellant submits that plaintiff-respondents were neither the owners nor in possession of the suit property and suit was filed on false and frivolous grounds. The appellant has been in possession of the suit property on the basis of sale deed dated 29.11.1967. Learned counsel for the appellant relies upon judgments of the Supreme Court rendered in **Guman Singh and others vs. Manga Singh (D) by LR. and others**, 2016(3) RCR (Civil) 592 and **Saroop Singh vs. Banto and others**, 2005(4) RCR (Civil) 599 and a judgment of this Court passed in **Gurlal Singh and another vs. Baldev singh and another**, 2016(4) Law Herald 2820 in support of his contentions.

Heard arguments of learned counsel for the appellant and have also perused the judgments of both the Courts below as well as other documents available on the file. Facts relating to filing of suit, written statement and judgments of both the Courts below are not disputed.

The appeal came up for hearing on different dates as it was adjourned on request of learned counsel for the appellant. On 9.5.2016, the following order was passed:-

“In the sale deed, the total sale price has been shown to be Rs. 270/-, however the price of the share purchased by the appellant is Rs.90/- only.

Learned counsel for the appellant seeks time to show the case law that the sale price of the property purchased by the appellant shall be considered to be only Rs. 90/- and there was no need for registration of the sale deed.

Post the matter on 24.05.2016.”

In spite of having various opportunities, learned counsel for the appellant could not show that the sale price was Rs. 270/- and price of the share purchased by appellant was only Rs. 90/-. Learned counsel for the appellant sought more time to show case law on the point that the sale price of the property purchased by appellant shall be considered to be Rs. 90/- only and there was no need for registration of sale deed. The findings recorded by the Civil Court in para nos. 13 and 14 reads as under:-

“13. After hearing learned counsel for both the parties and going through the case file, very minutely, I find that the plaintiffs have claimed that plaintiff no. 1 along with her brother Telu Ram and sister Seeto alias Surjit Kaur is the owner of the suit property fully detailed in amended head note of the plaint. Telu Ram and Seeto alias Surjit Kaur have already expired and now the plaintiffs no. 2 and 7 being their legal heirs have entered into the footsteps of Telu Ram and Seeto alias Surjit Kaur and now the plaintiffs are the owners of the suit property at the spot. The defendants have no right, title or interest whatsoever with the suit property in any way, but they have encroached upon the suit property illegally and forcibly. The plaintiffs have claim their ownership on the basis of revenue record i.e. Jamabandi for the year 2004-2005 as Ex. P1. Whereas on the other hand, the

defendants have alleged that the plaintiffs are not owners of the suit property and they claimed their ownership and possession over the suit property on the basis of writing dated 29.11.1967 alleging that formerly Bir Singh son of Bhola Singh and Telu Singh son of Bir Singh were the owners in possession of the suit property and they sold 1/3 share of the same to Hari Singh for Rs. 90/- and 1/3 share to Chand Singh for Rs. 90/- and remaining 1/3 share to Jang Singh for Rs. 90/- vide unregistered sale deed dated 29.11.1967 and since then formerly Chand Singh, Hari Singh and Jang Singh and now the defendant no. 1 is in possession of the same as owner. In order to prove the writing dated 29.11.1967, the defendants have examined DW2 Parkash Chand, who stated that he scribed the writing dated 29.11.1967 Ex. D2 at the instance of the parties, vide which Beer Singh and Telu Singh had sold four biswas of land out of their total land to Chand Singh, Jang Singh, Hari Singh sons of Natha Singh to the extent of 1/3 share each for the sum of Rs. 90/- each and possession of the same was delivered at the spot. Perusal of writing Ex. D2 goes to show that there is no mention of any khasra number of the

property, in the absence of which, it is difficult to ascertain as to which of the property was sold. Moreover, the said writing is an unregistered document. Further more, the ink of the thumb impressions of both the vendors is different. The said writing Ex. D1 also does not bear the signatures/thumb impressions of vendees. DW2 Parkash Chand himself admitted during his cross-examination that there is no mention of any khasra number in the said writing. He further stated that at the time of execution of the writing Ex.D2, the jamabandi was not inspected. He further stated that the ink of the thumb impression is also different. There is no evidence led on record by the defendants to prove that any mutation or registry was got sanctioned by them in their favour on the basis of the said writing. The defendant Ajaib Singh himself stated during his cross-examination that he did not get entered any mutation or registry in their name in the revenue record. Except the scribe no other witness has been examined by the defendants to prove the due execution of the writing Ex. D2. DW 2 Parkash Chand, Scribe has simply stated that the attesting witnesses have expired. But there is no

documentary proof i.e. their death certificate to prove that they have expired.

14. Above all, the said writing Ex. D1 can not be said to be a legal and valid document being surrounded by suspicious circumstances. Whereas on the other hand, perusal of jamabandi Ex. P1 depicts that Telu Ram and the plaintiff Akki and Seeto daughters of Beeru Singh son of Bhola singh are still the owners in possession of the property in dispute. There is no evidence led on record by the defendants that the plaintiffs are not the legal heirs of Telu Ram and Seeto alias Surjit Kaur. Therefore, the plaintiffs are held entitled to the possession of the suit property being owners of the same and the defendants have no right, title or interest in the suit property in any way, which they had encroached upon during the pendency of suit filed by the plaintiffs for permanent injunction against them as is clear from certified copy of order Ex. P2 and statement Ex. PS. Hence, in view of discussion made above, this issue stands decided in favour of the plaintiffs and against the defendants.”

Similarly, the findings recorded by the lower Appellate Court

in para nos. 12 to 14 are reproduced as under:-

“12. The counsel for the respondents further argued that the alleged writing Ex. D2 is for total amount of Rs. 270/- i.e. Rs. 90/- each to three persons and therefore even if it is taken as document of sale, it required registration. He has referred to **2002 (3) - RCR (Civil)-341 (Rajasthan)- Davendra Singh and others vs. State of Rajasthan and Ors.**, where it has been held that if value of property is more than Rs. 100/- but sold for less than Rs. 100/-, it requires registration. Section 54 of Transfer of Property Act comprehends the value of the property as distinguished from the purported consideration of alienation. It can not be so done without a registered document. This argument of learned counsel for the respondent/plaintiff also could not be rebutted. Thus the alleged writing being unregistered, can not be taken into consideration.

13. The counsel for the appellants/defendants argued that his plea of adverse possession has not been taken into consideration. He has referred to **2011 (2) - Civil Court Cases-001 (S.C.)- Kalyan Singh Chouhan Vs. C.P. Joshi**, where it has been held that Court should not decide a suit on a matter on which no issue has been framed. He has also referred to **1997 (2) S.L.J. - 1518 (H.P.) - Smt. Kimtu Vs. Smt. Rama Dogra and others**, where it has been held that if a person who enters into

possession of the property under an invalid transaction and continuous in possession, then adverse possession commence from the date entering into possession under the illegal transaction, then the person acquires and perfects title to the property on completion of 12 years as owner. However the counsel for the respondent/plaintiff argued that defendants have not produced any evidence to show if they are in continuous possession for more than 12 years. No independent witness in this regard has been examined. The counsel for the plaintiffs/respondents also cited **2007 (3) - Recent Civil Reports- 361 (P&H)- Communist Part, Ropar and others Vs. Sant Saran Bhalla (Dead) through his L.Rs and others,** where suit for possession filed by owner. Defendants took plea of adverse possession. It was held that plea of adverse possession by necessary implication means admission of title of the plaintiffs. Since the title of the plaintiffs is not disputed, it is for the defendants to prove their adverse possession.

14. Now applying ratio of this authority, if defendants have taken the plea of adverse possession, then it amounts to admission of title of the plaintiffs. It was for the defendants to prove that they have become owners by way of adverse possession. However, defendants have failed to prove these facts. The learned lower Court in

view of these facts and evidence on record has rightly decreed the suit of the plaintiffs for possession.”

By considering the submissions raised by learned counsel for the appellant, findings recorded by both the Courts below and also considering that the defendant-appellant has taken the plea of adverse possession. Moreover, the defendant-appellant has admitted the title of the plaintiff-respondents and it was for her to prove that the plaintiff-respondents became owner of the suit property by way of adverse possession. However, the defendant-appellant failed to prove the adverse possession of the plaintiff-respondents. Even it was not proved by the defendant-appellant that she was in continuous possession over the land in dispute for more than 12 years. No independent witness was also examined to prove the possession. It has also been held in the judgment of the Lower Appellate Court that in case the value of the property was more than Rs. 100/- but sold for less than Rs. 100/-, still it requires registration. Section 54 of the Transfer of Property Act clearly shows that the value of property as distinguished from the purported consideration of alienation, cannot be done without a registered document. Even, the plea of adverse possession was not taken.

Not only the defendant-appellant was unable to prove the continuous possession nor cited any case law as to how the registration was not necessary in case the property was more than Rs. 100/-. Even the counsel appearing for defendant-appellant has not been able to show any provision or case law instead of getting opportunity.

January 20, 2017
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Yes