

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

**RSA No.4569 of 2017 (O&M)
Date of Decision: 27.09.2017**

Kamla Devi and others

... Appellants

Versus

Nirmala Rani and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. M.S. Khillan, Advocate,
for the Appellants.

ANIL KSHETARPAL, J. (ORAL).

CM 11939-C of 2017

For the reasons stated in the application, which is supported by an affidavit, the same is allowed and delay of 27 days' in filing the present appeal is condoned.

CM No.11942-C of 2017.

The application is allowed, subject to all just exceptions. L.Rs. of Smt. Kamlesh (deceased) are brought on record for the purpose of prosecuting the present appeal only.

Main case

The plaintiffs are in Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below.

The plaintiffs had filed a suit for possession and declaration with the consequential relief of permanent injunction. He had pleaded that late Shri Hargian Singh was owner of Plot No.218, Deep Colony, Assandh,

measuring 160 sq. yds. It was claimed that Hargian Singh has purchased this property vide registered sale deed dated 14.11.1958. It was claimed that Hargian Singh had died on 29.04.1970 leaving behind the plaintiffs as Class-I heirs. It was further claimed that the aforesaid plot was neither alienated nor agreed to be sold and it was found that the defendants No.1 and 2 are raising construction over the plot and hence the suit was filed.

The defendants appeared and contested the suit. It was pleaded that after the death of Hargian Singh, his son Surjit Singh had entered into an agreement to sell with respect to the property with Sant Ram - defendant No.5 on 13/14.09.1973. The agreement to sell was executed after receipt of the entire sale consideration. At the time of the agreement to sell, the possession was also delivered to defendant No.5. The defendants further asserted that they constructed a shop over the plot. It is further the case of defendant No.5 that he gifted the constructed shop to his son Gian Chand vide gift deed dated 5.11.2003. It was further asserted that Gian Chand further sold the property vide registered sale deed dated 04.05.2010 in favour of Kavita Devi i.e. defendant No.3.

Learned trial Court after appreciating the evidence available on the file held that although, Sant Ram cannot claim ownership on the basis of the agreement to sell only, however, his possession is protected under Section 53-A of the Transfer of Property Act. Learned trial Court noticed that the plaintiffs filed the suit by concealing material facts from the Court.

The plaintiffs filed the first appeal. Learned first Appellate Court after reappreciating the evidence available on the file, reaffirmed the

finding of fact recorded by the learned trial Court.

Learned counsel for the appellants has argued that since the agreement to sell does not confer a title, therefore, subsequent gift deed or sale deed would not confer ownership or any title on the defendants. He has further submitted that the property belonged to a joint family and, therefore, Surjit Singh alone was not exclusive owner of the property and hence he could not execute the agreement to sell. He has further submitted that the Courts have wrongly drawn presumption in favour of the agreement to sell on the ground that the document is more than 30 years old.

I have considered the submission of the learned counsel, however, I do not find any force in the same.

Learned counsel is factually incorrect in stating that the ownership is conferred on the defendants. Learned first Appellate Court has very clearly recorded that the possession of the defendants is protected in terms of part performance as provided under Section 53–A of the Transfer of Property Act. An individual who has paid the entire sale consideration and has been put in possession, is entitled to protect his possession particularly when he is not to do anything further pursuant to the agreement to sell.

Still further, this Court is clearly of the view that the plaintiffs filed the case by concealing material facts from the Court. This was totally a dishonest litigation. The plaintiffs went to the Court with a case which was totally false. In this case, the shop had been constructed by Sant Ram before 2003. It was a part of grain market. The plaintiffs dishonestly filed a

suit on 19.10.2012 after having entered into an agreement to sell way back in the year 1973 claiming that the defendants are trying to encroach upon it.

Still further, learned counsel for the appellants has submitted that it was a joint Hindu family property. There is no issue with respect to joint Hindu family property framed by the Court. It was not the case of the plaintiffs before the trial Court or the first Appellate Court. Unless there is an issue, this Court would refuse to examine such plea particularly when the plaintiffs have been found to have filed the suit by concealing material facts from the Court.

The last argument of the learned counsel is that the presumption as drawn by the Court with respect to the agreement to sell, is not available.

I have considered the submission of the learned counsel for the appellants. The original agreement to sell along with its translation has come on the record as Ex. D2. This document is more than 30 years old. This document is in writing. The Courts have correctively drawn a presumption particularly in the facts of the present case.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent finding of fact recorded by the Courts below. The appeal is dismissed with costs of Rs.50,000/-.

(ANIL KSHETARPAL)
JUDGE

27.09.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No