

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

103

RSA No.2145 of 1994 (O & M)
Date of Decision:24.01.2018

Raj Kumar @ Sodhi

...Appellant

Versus

Avtar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ankit Aggarwal, Advocate for
Mr. Sukhwinder Singh, Advocate and
Mr. Punit Bedi, Advocate
for the appellant.

Mr. M.S. Kang, Advocate
for the respondent.

ANIL KSHETARPAL, J.(Oral)

Defendant-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment passed by the learned trial Court.

In the considered opinion of this Court, following substantial question of law arise; 'whether it is mandatory for the vendee to prove title of his vendor before he can be declared owner of the property?'

Dispute between the parties in the present case is with regard to a plot situated in the Abadi of the village. Plaintiff filed a suit for declaration that he is owner in possession of a plot and also sought decree for mandatory injunction directing defendant-appellant to demolish wall 'A', 'B', 'C' in the site plan and also prayed for permanent injunction. It was the claim of the plaintiff that he had purchased the property vide registered sale deed dated 08.02.1996 from one Mahan Singh.

Singh was neither owner of the property nor in possession thereof. It was further pleaded that the wall is in existence for the last 40 years.

Learned trial Court dismissed the suit after recording a finding that title of Mahan Singh has not been proved by the plaintiff. The Court further recorded that Mahan Singh has not even been examined. The Court further noticed that the plaintiff while appearing in the witness-box has stated that before purchase of the property, he did not check the title of Mahan Singh.

However, the learned First Appellate Court reverse the finding on the ground that once a copy of the sale deed has been produced on record then the title of Mahan Singh stands proved. With this finding, the learned First Appellate Court reversed the judgment and decree passed by the learned trial Court.

It is fundamental that before a vendee can be declared owner on the basis of a registered sale deed, the vendee is required to prove title of his vendor so as to claim declaration from the court of law. In the present case, no evidence has been produced on file by the plaintiff that Mahan Singh was ever owner of the plot in question. Statement of the plaintiff, who has appeared as PW-3 makes an interesting reading:-

“ I did not see any title deed from Mahan Singh in respect of the property purchased by me. Only area has been given in the sale deed and not the dimensions. ”

In view of the aforesaid statement, it is apparent that the plaintiff neither checked the ownership of Mahan Singh nor produced any evidence that Mahan Singh was ever owner.

to prove title of his vendor, the suit filed by the plaintiff claiming that he is owner in possession of the property was not maintainable.

Learned counsel for the respondent has vehemently argued that in the Abadi of the village, there is no document of title and hence once a registered sale deed has been produced that itself should be accepted as an evidence of title. He has further submitted in that *Abadi*, the title of the property goes with possession.

This Court has considered the submission, however, do not find any substance therein particularly when the possession of Mahan Singh on the plot in dispute has not been proved by the plaintiff by leading cogent evidence.

Next argument of learned counsel for the respondent is that the registered sale deed has not been challenged by the defendant-appellant. In the considered opinion of this Court, a person who is not a party to the particular document, is not required to challenge the document. Here is a case where plaintiff-respondent had filed a suit and defendant had denied that Mahan Singh was not the owner. Defendant was not required to challenge the sale deed by filing a separate suit.

Next argument of learned counsel is that the registered document i.e. sale deed has a presumption of genuineness. He has relied upon the judgment passed by the Hon'ble Supreme Court AIR 2006 (SC) 3608 “***Prem Singh and others vs. Birbal and others***” to contend that once there is a registered sale deed, it has a presumption of genuineness. There is no dispute with the above preposition, however, the registered document does not prove title unless a vendee proves on the file that his vendor had

In view of the aforesaid discussion, question of law framed earlier is answered in favour of the appellant.

Regular second appeal is allowed. The judgment passed the learned First Appellate Court is set aside and that of the learned trial Court is restored.

24.01.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No