

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

RSA No.1120 of 1995

Date of Decision.03.04.2018

Madan Lal

.....Appellant

Vs

Labh Chand (deceased through LRs)

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kewal Krishan, Advocate for
Mr. Premjit Kalia, Advocate
for the appellant.

Mr. Raman Sharma, Advocate
for the respondent.

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AMIT RAWAL J.(ORAL)

The appellant-defendant is in regular second appeal against the judgment and decree dated 20.01.995 rendered by the lower Appellate Court whereby judgment and decree passed by the trial Court dismissing the suit claiming possession, has been reversed, meaning thereby, the suit of the plaintiff has been decreed.

Succinctly, the facts as emanated from the pleadings of the parties are that the respondent-plaintiff in pursuance of the auction proceedings initiated by the Income Tax Department against M/s K.S. Rashid & Sons, the suit property comprising of khasra Nos.108, 110, 109 min, 111, 112 and 116 measuring 10 kanals 4 marlas and 163 feet situated in Abadi Chief Khalsa Dewan, G.T. Road, Putlighar, Amritsar was sold in public auction on 25.2.1970. The respondent-plaintiff, Labh Chand along with one Sat Pal purchased the aforementioned property. After the auction, the plaintiff went to his village for making arrangement of the balance

amount and when he returned, he found that the defendant had taken the

forcible and illegal possession and raised construction thereon. It is in that background, the suit aforementioned was filed.

The defendant contested the suit by raising the preliminary objection on account of maintainability of the suit, jurisdiction of the Civil Court and non-payment of court fee and set up the plea that he has become owner of the suit property by way of adverse possession.

The trial Court on the basis of the aforementioned pleadings framed the following issues:-

- “1. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP*
- 2. Whether the plaintiff has locus standi to file the present suit? OPP*
- 3. Whether the defendant is in adverse possession of the property? OPP*
- 4. Whether the suit is bad for non-joinder of necessary parties? OPD*
- 5. Whether the suit is liable to be stayed? OPP*
- 6. Whether the suit is time barred? OPP*
- 7. Whether the plaintiff is entitled to a decree for possession as prayed for? OPP*
- 8. Relief.”*

Both the parties led their respective evidence and the trial Court on the preponderance of the same, dismissed the suit on the premise that the sale certificate required registration as the property was having value of more than ₹100/-. In the appeal preferred by the respondent-plaintiff against the same, the lower Appellate Court has allowed the appeal

by relying upon the ratio decidendi culled out by Hon'ble Supreme Court in *Smt. Shanti Devi L. Singh Vs. The Tax Recovery Officer 1990 (3) SCC 605* wherein it has been held that in the auction conducted by the departments for realizing dues, the sale certificate issued to the purchaser does not require any registration.

Mr. Kewal Krishan for Mr. Premjit Kalia, learned counsel appearing on behalf of the appellant submitted that the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law as the sale certificate required registration. The agreement to sell alleged to have been executed on 01.03.1970 between the parties and therefore, the plaintiff was put into possession. He was entitled to seek retention of his possession as per provisions of Section 53A of the Transfer of Property Act but the lower Appellate Court below had not assigned any reason or addressed the aforementioned issue, therefore, there is abdication and illegality.

Per contra, Mr. Raman Sharma, learned counsel appearing on behalf of the respondent-plaintiff submitted that the finding rendered by the lower Appellate Court is based upon the ratio decidendi culled out by Hon'ble Supreme Court in *Smt. Shanti Devi L. Singh's case* (supra) wherein relying upon the provisions of Section 17 (2)(xii), it has been held that the certificate of sale itself not being a compulsorily registrable document, therefore, does not require registration, thus, there is no illegality and perversity. Even otherwise, plea of adverse possession tantamounts to admitting the title of the plaintiff, therefore, the Court below could not have declined the relief of possession as it was based upon the title, thus, urges this Court for upholding the judgment and decree rendered by the lower Appellate Court.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Kewal Krishan, for, the finding rendered by the lower Appellate Court does not call for interference, owing to the ratio decidendi culled out by Hon'ble Supreme Court in Smt. Shanti Devi L. Singh's case (supra). The relevant paragraph 9 of the same reads as under:-

*“9. There are thus some differences between the two procedures and this aspect has been touched upon in some very early decisions under the [Registration Act](#), 1877: vide, [Fatteh Singh v. Daropadi](#), (1908) *Punj. Rec.* Case No. 142; [Siraj-un-nissa v. Jan Muhammad](#), (1882) 2 All. W.N. 51; [Masaratun-nissa v. Adit Ram](#), (1883) *I.L.R.* 5 All. 568 (F.B.). Reference may also be made to [Premier Vegetable P. Ltd. v. State](#), AIR 1986 Madhya Pradesh 258. We need not, however, consider for the purposes of this case whether filing and registration mean one and the same thing for all purposes and what the legal effect of these differences is. For, though the processes are different, the purchaser at a court or revenue sale is under no disadvantage because of the lack of registration. The certificate of sale itself not being a compulsorily registrable document: vide Section [17\(2\)\(xii\)](#), the transfer of title in his favour is not vitiated by the non-registration of the certificate. The copy of the certificate filed in Book No. 1 contains all the relevant details. These details are reflected in the indices maintained under Section [55](#) which are open to inspection to all persons. (We may point*

out here that Section 55(2) only refers to memoranda filed but it seems clear, particularly in the light of various State amendments, that the index to Book No. 1 should also contain the details of copies of document filed by him). These requirements are sufficient to ensure that any person intending to purchase or deal with the property is put on notice about the principal contents of the certificate of sale provided he inspects the relevant book and/or index. It is sufficient to say, for the purposes of this case, that all that the Sub-Registrar required to do is to file the copy of the certificate in Book No. 1 and no more. He does not have to copy out the certificate or make any other entries in Book No. 1.”

Even otherwise, the appellant-defendant has set up a plea of adverse possession which tantamounts ownership of the plaintiff. In view of the aforementioned, the arguments of Mr. Kewal Krishan have not been able to cut ice to form an opinion than the one already arrived at by the lower Appellate Court.

I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court as the same is based upon correct appreciation of fact and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

April 03, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No