

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

**RSA-2913-2016 (O&M)
Date of Decision: 16.10.2018**

Pal Kaur

...Appellant

Versus

Gulzar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Arun Takhi, Advocate for the appellant.

HARINDER SINGH SIDHU, J.

The defendant has filed this Regular Second Appeal assailing the judgment of the learned Additional District Judge, Hoshiarpur, whereby, the learned lower Appellate Court has allowed the appeal of the plaintiff against the judgment of the trial Court dismissing his suit and decreed the suit of the plaintiff.

The plaintiff had filed the suit for mandatory injunction for directing the defendant to hand over vacant possession of land measuring four marlas as depicted in the site plan situated at Village Dihaina, Police Station Mahilpur, District Hoshiarpur and for restraining the defendant from alienating the said land.

It was the case of the plaintiff that Bhagat Singh @ Bhagtu was the owner of the plot in dispute bearing No.38 measuring eight marlas situated within the abadi of Village Dihaina. The plot had been allotted to Bhagat Singh @ Bhagtu by the Rehabilitation Department vide allotment letter dated 27.08.1950.

After his death, the plot was inherited by his legal heirs Daulat Ram and Sadhu

Ram (sons) and Beant Kaur and Pessu (daughters) in equal shares. Daulat Ram and Beant Kaur had sold their respective shares of two marlas each to the plaintiff vide Registered sale deed dated 17.06.1994. Since then the plaintiff was in peaceful possession of the same as owner. All the legal heirs of Bhagat Singh @ Bhagtu had since died. The defendant was claiming herself to be the exclusive owner of the entire eight marla plot and threatening to dispossess the plaintiff from the said plot and sell the same to some third person. Hence, the suit.

The case of the defendant was that Pessu was not the daughter of Bhagat Singh. Rather her name was Persaser Kaur and was living abroad. The legal heirs of Bhagat Singh had not divided the plot in dispute in equal shares. Beant Kaur had never come to Village Dihaina. She was living with her husband at Village Begampur, Jandiala, where she died on 03.02.1995. Daulat Ram was residing in Padampur, District Ganganagar (Rajasthan) for the last more than 50 years. He died on 05.11.1996. Both Daulat Ram and Beant Kaur had never come to village Dihaina for the last more than 50 years. They were never in possession of the suit property. It is the defendant who is in actual, continuous possession of the suit property. By efflux of time the defendant had become the owner in possession of the suit property by way of adverse possession. The defendant had constructed her house as well raised as boundary wall in the suit property. The sale deed dated 17.06.1994 executed in favour of the plaintiff was a forged and fabricated document.

In order to prove his case, the plaintiff appeared as PW-1. He also examined PW-2/Ranjit Singh and PW-3/Harjinder Singh. No evidence was produced on behalf of the defendant. Neither did she appear nor did she bring on

record any oral or documentary evidence to rebut the evidence of the plaintiff.

The plaintiff appearing as PW-1 deposed in terms of the plaint. PW-2 Ranjit Singh stated that he was lambardar of Village Dihaina. He knew both the parties to the suit. Bhagat Singh @ Bhagtu was owner of Plot No.38 measuring eight marlas situated at Village Dihiana which had been allotted to him by the Rehabilitation Department vide allotment letter dated 27.08.1950. He stated that after the death of Bhagat Singh the suit property was inherited by his legal heirs Daulat Ram, Sadhu Ram (sons) and Beant Kaur and Pessu (daughters) in equal shares. The legal heirs of Bhagat Singh had divided the said plot in equal shares amongst themselves. Daulat Ram and Beant Kaur had appointed him as their attorney to sell their share of the plot measuring four marlas vide registered Power of Attorney dated 28.01.1992. Photocopy thereof was Ex. D-3. On instructions of Daulat Ram and Beant Kaur he had executed sale deed dated 17.06.1994 in favour of plaintiff for a sale consideration of Rs.8,000/-. He stated that he had seen the original sale deed and site plan. Photocopies of the said sale deed and site plan are Ex.P-4 and P-5. He identified his signatures thereupon. He stated that the sale deed had been attested by the Gurcharan Singh Lambardar and one Kamaljit Singh of village Dihaina. He deposed that the plaintiff was in possession of the four marlas of land and the defendant have no right title or interest in the suit property. PW-3 Harinder Singh deposed that he is lambardar of Village Dihaina. Both the parties were known to him. He stated that the plot in dispute had been purchased by the plaintiff from Daulat Ram and Beant Kaur vide registered sale deed and the plaintiff was in possession of the same. The defendant had encroached upon the plot by constructing boundary wall and locked the same. He identified the

signatures of his father Gurcharan Singh on the sale deed Ex.P-4. He stated that his father had died about five or seven years ago.

The learned trial Court noted that apart from the oral evidence the plaintiff had produced a documentary evidence in the form of photocopy of allotment letter Ex.P-2, photocopy of power of attorney Ex-P-3, photocopy of sale deed Ex.P-4 and photocopy of site plan EX. P-5. The Court observed that the photocopy of allotment letter dated 27.08.1950 was in Urdu language. The plaintiff had not examined any official of the Rehabilitation Department to prove that this letter had in fact been issued by their office. Though the plaintiff had produced photocopy of the sale deed dated 17.06.1994, however, he has not proved the original sale deed as neither the scribe of the sale deed nor any official of the office of Sub- Registrar was examined by him. Still further the plaintiff had not examined the draftsman who had prepared the site plan. Accordingly it was held that the plaintiff had not been able to prove his case. Hence he was not entitled for the relief of mandatory injunction as prayed for. The suit was dismissed.

The plaintiff filed an appeal which has been allowed. The learned Lower Appellate Court held that the original sale deed had been produced in Court. It was seen and then returned. The copy of the same was placed on the file and exhibited without any objection. Hence, the claim of the plaintiff could not be rejected on the ground that the original sale deed had not been produced. It was noticed that even at the time of arguments in the appeal the plaintiff was in possession of the original sale deed. Moreover, the sale deed was a registered document. If it was the defendant's case that the sale deed had not been executed or that a fabricated document had been presented it was for the defendant to have

summoned the record from the office of the Sub- Registrar to prove that there was no such sale deed in existence. The Court also noticed that the plea of adverse possession taken by the defendant itself presupposes that she admitted the title of the plaintiff over the suit land. The Court also noticed that the attorney who had executed the sale deed on behalf of Daulat Ram and Beant Kaur had appeared as a witness and deposed that he was duly authorized by power of attorney in his favour to execute the sale deed. The Court relied on ***Ravinder Pal Singh vs. Satish Kumar 2009(4) Civil Court Cases 356***, wherein it was held that no attesting witness is required to prove the execution sale deed unless its execution is denied by the person who had executed the same. Mere denial by the defendant is not enough. The learned lower Appellate Court further relied upon ***Abdul Rahim vs. Sk. Abdul Zabar, (2009)6 SCC 160***, wherein Hon'ble Supreme Court held that a registered document carries a presumption that it was validly executed. It is for the party questioning the genuineness of the transaction to show that in law the transaction was not valid. In the present case the onus was on the defendant to prove that the sale deed was not genuine but she never turned up to depose in Court. Learned lower Appellate Court further relied upon ***Venkateshwarlu vs. Divi Appalacharyulu 2014(2) Civil Court Cases 461***, wherein it was held that certified copy of a sale deed being a public document need not be proved by examining a witness to the sale deed. The learned lower Appellate Court held that the trial Court had wrongly dismissed the suit of the plaintiff. The plaintiff had in fact been able to prove that the suit land had been purchased by him by a valid registered sale deed. Accordingly, the judgment of the trial Court was set aside and the suit of the plaintiff was decreed.

In allowing the appeal of the plaintiff the Ld. Lower Appellate Court has correctly appreciated the facts and law. It has been rightly held that the plaintiff has been able to prove his case that he had purchased the plot by a valid sale deed and was entitled to the injunction prayed for.

Ld. Counsel for the appellant has not been able to establish as to how the judgment is perverse or against the facts on record.

Accordingly there is no merit in the appeal and the same is dismissed.

16.10.2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No