

RSA No. 3426 of 2015 (O&M)

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

**RSA No. 3426 of 2015 (O&M)
Date of decision: 17.5.2018**

Mehar Singh

... Appellant

Versus

Darshan Kaur (since deceased) through LR's and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Surinder Mohan Sharma, Advocate
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the respondents-plaintiffs was decreed by the trial court, vide judgment and decree dated 26.8.2014. For, the appeal preferred against the said decree failed, and was dismissed on 30.3.2015, the appellant-defendant No.1 is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff-Darshan Kaur filed a declaratory suit claiming herself to be the owner of house No. 135/1 (old No. 135), situated in the Municipal Limits of Kalka, as also that the sale deed dated 5.9.2005 executed by defendant No.2 in favour of defendant No.1 was illegal, null and void. And, by way of consequential relief, injunction was prayed for, to restrain defendant No.1 from causing interference in her possession and alienating the suit property.

In brief, the case set out by the plaintiff was that the suit property measuring 200 square yards, bearing No. 135 (old No. 135 ZL) was earlier owned and possessed by Gurbachan Singh and Sher Singh. The plaintiff purchased the suit property, vide sale deed dated 9.1.1981 for a consideration of Rs. 32,500/-. The plaintiff was put in possession of the first and second floor of the suit property, as the ground floor was already in occupation of the two tenants, namely Harbans Lal and Kulwant Singh. The plaintiff filed an ejectment petition against those tenants, which was later dismissed as withdrawn, on the basis of a compromise dated 21.3.1983, and the rent was increased from Rs.80 to Rs.260 per month. But, as her needs/requirements increased with time, plaintiff filed an ejectment petition No. 12, dated 9.1.1996, seeking eviction of her tenants on account of personal necessity. The Rent Controller dismissed the ejectment petition, vide order and judgment dated 18.3.2004. However, the appellate authority accepted the appeal filed by the plaintiff and ordered eviction of the tenants, vide judgment dated 21.5.2004. The plaintiff was shocked to receive a notice dated 28.11.2005, issued by defendant No.1 claiming himself to be the owner of house in question. It then transpired that sale deed dated 5.9.2005 was executed by defendant No.2 in favour of defendant No.1 as regards the property measuring 2 biswa comprised in khasra No. 43. And, it was on the basis of the said sale deed, defendant No.1 started claiming himself to be the owner of the suit property and threatened to dispossess the plaintiff. Defendant No.2 was neither the owner nor in possession of the house in question, and therefore, had no right to execute the sale deed dated 5.9.2005. Thus, the suit.

Although, defendants No.1 and 2 filed separate written statements, but they both set out a similar stand that the suit property was a part of

Zamidara land, comprised in khasra No. 43. It was denied that Gurbachan Singh and Sher Singh were the owners of the house in question, and, therefore, the sale deed dated 9.1.1981 was invalid. Further, the vendor of the defendants had given the suit property to Pt. Anant Ram on chakota, who further let it out to Ram Niranjana. In fact, the vendors of the plaintiff were sub-letees of Ram Niranjana over the suit property, and, thus, were not owners thereof. The payment of rent by Harbans Lal and Kulwant Singh for the ground floor of the suit property to the plaintiff would not confer ownership upon the plaintiff.

On a consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that there was no dispute as regards identification of the suit property as the property purchased by the plaintiff, vide sale deed 9.1.1981, as also the defendants, pursuant to the sale deed dated 5.9.2005, was the same. Execution of the sale deed dated 9.1.1981, bearing No. 1259/1 (Ex.P1), in favour of the plaintiff, was not specifically controverted by the defendants. And its registration was also proved by Ajay Kumar, Clerk D.C. Office, (PW2). Thus, the question to be determined was; if the vendors of the plaintiff, i.e. Gurbachan Singh and Sher Singh held a valid title to the property bearing No. 135ZL, which was concededly transferred in favour of the plaintiff. The plaintiff relied upon Mark A-copy of house tax assessment register for the year 1962-63, Mark B-copy of house tax assessment register for the year 1971-72, Ex.P3-copy of house tax assessment register for the year 1974-75, Mark C-copy of house tax assessment register for the year 1979-80, and Mark D-copy of house tax assessment register for the year 1983-84. Further, Balwant Singh, Clerk, Municipal Corporation, Panchkula, (PW3), testified in his deposition that the municipal record, as regards the suit property bearing No. 135 and 135/1 prior to the year 1971-72, could not be traced, for it

had completely perished. An analysis of the entries in the house tax assessment register for the years 1974-75 (Ex.P3), 1971-72 (Mark-B) and 1962-63 (Mark-A) showed that Bishan Singh (Tailor by profession) was the owner of the suit property bearing No. 135/1, and Rawal Singh along with Gurdev Singh (husband of the plaintiff), were in possession thereof as tenants. Significantly, Gurbachan Singh and Sher Singh were sons of Bishan Singh. And similarly, Harbans Lal and Kulwant Singh, were sons of Rawal Singh. Meaning thereby, the vendors of the plaintiffs happened to be the sons of Bishan Singh, who sold the property bearing No. 135 ZL to the plaintiff, vide sale deed dated 9.1.1981. The plaintiff had also examined Satpal Rana (PW5), Registration Clerk in the office of Sub Registrar, Kasauli, District Nalagarh, who testified the registration of the sale deed dated 11.1.1943 (Ex.PW5/1). Although, the said sale deed was in Urdu language, but its Hindi translation was brought on record by the plaintiff, which revealed that the property bearing No. 135/1 was sold by one Ram Niranjana son of Lala Karibu to Bishan Singh. Thus, Bishan Singh (father of Gurbachan Singh and Sher Singh) had a legitimate title over the suit property, which had since been transferred in favour of the plaintiff, vide sale deed dated 9.1.1981.

As regards the question as to what would be the evidentiary value of the entries in the house tax registers or if these alone could be considered as document of ownership/title, it was observed that the entire case set out by the defendants themselves was based upon the municipal records. For, defendants examined Ashok Kumar (DW1), who proved the house tax assessment registers (Ex.D10 to Ex.D13). Further, the defendants, in support of their case, even produced the municipal records (Ex.D5 to Ex.D9), in respect of the adjoining properties, i.e. property No. 136/1, 134/2 etc. Thus, it was observed:-

“In this manner, though the Municipal record like house tax assessment register may not be taken as a document of valid title of a person in whose favour such entries of ownership have been made, yet in the case in hand, the said record placed before this Court in the form of house tax assessment register is not of less significance as it guides the court (in the absence of other revenue record or other material) that in whose favour, the right of ownership over the property in dispute was lying prior to the execution of the sale deed dated 9.1.1981”.

Further, the suit property bearing No. 135 ZL was in dispute even in the earlier two litigation between the parties. The eviction petition No. 12 of 1996, filed by the plaintiff against her tenants in occupation of the ground floor of the house in question, was dismissed by the Rent Controller, vide judgment dated 18.3.2004 (Mark R). But, the said order was set aside by the appellate authority, vide judgment dated 21.5.2004 (Ex.P4), and the ejectment of the tenants was ordered. Civil Revision No. 3292 of 2004, filed by the tenants against the said judgment, was dismissed by this Court, vide order and judgment dated 9.4.2014 (Ex.PY). And even the SLP against the decision of this Court has since been dismissed by the Supreme Court, vide order dated 3.6.2014 (Ex.PZ). Most significantly, Rent Petition Nos. 10 and 11 of 2005, filed by defendant No.1 under Section 13 of the Rent Act, 1973, against the plaintiff and her tenants, i.e. Harbans Lal and Kulwant Singh for their eviction from the property bearing No. 135ZL, had also been dismissed on 29.2.2012 (Ex.P6 and Ex.P5, respectively). It was held that argument that the decisions

rendered by the authorities in favour of the plaintiff under the Rent Act were inconsequential as regards her claim qua ownership/title to the suit property could not be disputed. But the findings recorded by the Rent Controller, Appellate Court as also this Court in those proceedings, as regards illegality of the sale deed dated 5.9.2005 (Ex.D14), on the basis whereof defendant claimed to be the owner could not be ignored either. For it was recorded:-

“(i) The finding recorded at page No.6 of the order dated 9.4.2014 passed by Hon'ble Justice Mahesh Grover in C.R. No. 3292 of 2004 that the said sale deed dated 5.9.2005 bearing document No. 1871 is shrouded with suspicious circumstances and this sale deed does not effect the right, title or interest of the present plaintiff in the said property.

(ii) The clear finding recorded by learned Rent Controller, Panchkula Sh. Man Pal vide judgment dated 29.2.2012 passed in rent petition No. 10 and 11 of 2005 (Ex.P5 and Ex.P6) that the sale deed dated 5.9.2005 has been got executed by the present defendant No.1 from the defendant No.2 in collusion with Harbans Lal and Kulwant Singh tenant of the ground floor of the property in question in order to avoid the ejectment proceedings against them and with a malafide purpose to defeat the right of the present plaintiff in the said property. It has also been recorded in the two said orders that the sale deed dated 5.9.2005 bearing document No. 1871 has been executed by the defendant No.2 in favour of the defendant No.1 by way of concealing the Municipal number, i.e. no. 135 ZL and the said impugned sale deed has been executed only in regard to the property comprised in khasra No. 43 despite of the fact that the said land, i.e. property no. 135 ZL had already fallen within Municipal area in the

year 1950/1960.

The plea as regards defendant No.1 being a bonafide purchaser for consideration was also rejected, for it was concluded that the evidence on record showed that the sale deed dated 5.9.2005 was rather intentionally got executed by defendant No.1 from defendant No.2 by concealing the municipal number of the suit property, despite the fact that particular municipal number was assigned to the house in question. Further, the sale deed dated 9.1.1981, which was proved to be registered at vasika No. 1259/1 was executed in favour of the plaintiff 24 years prior to the execution of the sale deed dated 5.9.2005. Thus, the execution and registration of the said document was a notice to the public at large. Hence defendant No.1 could not be said to be a bonafide purchaser without knowledge of execution and registration of the sale deed dated 9.1.1981. Still further, Balwant Singh (PW3) deposed that the plaintiff-Darshan Kaur alone had been paying the house tax regarding the suit property. And, as indicated earlier, evidence on record proved that the sale deed dated 5.9.2005 was got executed by defendant No.1 from defendant No.2 in collusion with the tenants, i.e. Harbans Lal and Kulwant Singh, to avert ejectment in an eviction petition filed by the plaintiff. What further requires to be noticed is that defendants, in support of their claim as regards title to the suit property, had relied upon the municipal records (Ex.D5 to Ex. D9), but the same pertained to adjacent properties. No cogent evidence was led either to show that defendant No.2 (Indro Devi) possessed a valid title to the suit property. And, that being so, the sale deed, dated 5.9.2005, executed by her in favour of defendant No.1 was also invalid, for Indro Devi could not have passed a better title than what she possessed herself. Significantly, nothing was brought on record to show if pursuant to the sale deed dated 5.9.2005, defendants ever

occupied/entered possession of the suit property.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at by both the courts were either contrary to the record or suffered from any material illegality. No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

17.5.2018
AK Sharma

Whether speaking / reasoned: YES
Whether Reportable: