

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 5069 of 2016

Date of Decision: 12.10.2018

Krishan Kumar

.....Appellant

Vs.

Jag Ram (deceased) through his LR's and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Parminder Singh, Advocate,
for the appellant.

AMOL RATTAN SINGH, J. (ORAL)

CM No. 15172-C-2018

By this application, the LR's of the respondent, Jag Ram, are sought to be brought on record, he having died on 28.11.2016.

Since the appeal itself is being heard, for final disposal, I do not consider it necessary to issue notice in this application.

Consequently, it is allowed subject to all just exceptions and the five persons whose names are given in paragraph 2 of the application, i.e. Krishan Kumar (present appellant), Subhash Chander, Surinder Kumar, Sunita and Anita, are ordered to be impleaded as the LR's of the sole respondent, i.e. their father, with the amended memo of parties also ordered to be taken on record.

RSA No. 5069 of 2016

This second appeal has been filed by the respondent in a suit filed by his father against him, seeking a decree of mandatory injunction that he (appellant-defendant) hand-over vacant possession of the portion of the

house as was shown in red colour in the site plan led by way of evidence by the respondent-plaintiff.

The case of the respondent-plaintiff was that he had purchased the property in question vide a registered sale deed dated 11.03.1985, from his own funds, and therefore it was his exclusive property, of which he was in physical possession (the house having been constructed after the purchase of the plot).

It was further stated that he had sold the northern portion of the house, measuring 96 square yards, vide a sale deed dated 11.11.2008 to his daughter-in-law Smt. Meera Devi, wife of another son of his, i.e. Subhash Chander, (with the said sold part of the house as shown in the aforesaid site plan).

However, as per the plaintiff, Meera Devi and her husband Subhash Chander were in possession of some excess area as was also shown in the site plan, for recovery of which he had filed a separate suit seeking, again, a decree of mandatory and permanent injunction against them.

The appellant was stated to have occupied the southern part of the house consisting of three rooms and open court yards and a toilet.

As per the respondent-plaintiff, the conduct of the appellant towards the father, i.e. the plaintiff, had been unlike a son and time and again he had been humiliating him, consequent upon which the plaintiff did not want the appellant to retain any possession of any part of the house, he being the absolute owner thereof. It had been admitted that the appellant had been earlier allowed to occupy a portion of the house only because he was the son of the plaintiff, (the inference therefore being that he was a licensee on the part occupied by him).

Notice having been issued to the appellant-defendant, he filed a written statement taking the usual preliminary objections of *locus standi*, lack of cause of action, maintainability of the suit etc., while on merits he contended that he in fact was the absolute owner in possession of the southern portion of the house as was occupied by him, with the plaintiff already having sold off 96 square yards on the northern part of the house, the remaining part therefore being in possession of the appellant-defendant.

It was further contended that the house was purchased out of the joint funds of the firm jointly run by the parties to the suit, i.e. M/s Jag Ram Krishan Kumar Timber Merchant, which was being so run since 24.04.1978, with the appellant-defendant being a 40% share-holder therein up-to 1992, after which he, i.e. the appellant, became the sole proprietor up-to 2005, and thereafter, on the basis of an oral family settlement arrived at between him and his father, i.e. the plaintiff, the shop of the firm was given to the plaintiff while the house in question was given to the appellant-defendant, who thereafter had been in continuous and peaceful possession thereof, with no other family member actually having any concern with it.

A replication having been filed by the respondent, controverting the contents of the written statement, the following issues were framed by the trial Court:-

“1. Whether the plaintiff is entitled to a decree for mandatory injunction as prayed for? OPP

2. Whether the suit of the plaintiff is not maintainable in the present form?

3. Whether the plaintiff has got no locus-standi and no cause of action to file the present suit? OPD

4. Whether the plaintiff has not come to the Court with clean hands and has suppressed the true and

correct facts from the Court? OPD

5. *Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD*

6. *Relief.”*

The plaintiff, other than examining himself as PW-1, examined one R.K. Kamboj, Draftsman, as PW-2, who testified that he had prepared the site plan Ex. P-2 on the instructions of the plaintiff, with the plaintiff also having tendered documentary evidence in the form of the original sale deed as Ex. P-1, the site plan (aforesaid) as Ex. P-2, a judgment dated 10.05.2011 as Ex. P-3, a decree-sheet as Ex. P-4, a legal notice as Ex. P-5 and a postal receipt Ex. P-6.

The appellant-defendant examined himself and one Babu Ram as DWs 1 and 2 respectively, both of them tendering their respective affidavits.

In rebuttal, the respondent-plaintiff examined one Satya Narain Sharma, Registry Clerk in the Tehsil Office Gharaunda as PW-3, who testified in respect of a sale deed dated 11.11.2008.

He also examined PW-4, again a Registry Clerk in the Tehsil Office at Karnal, in respect of a sale deed dated 13.10.1969.

Upon appraising the aforesaid evidence and the pleadings before it, the learned trial Court came to the conclusion that vide a registered sale deed dated 11.03.1985, the suit property had been registered in the name of the plaintiff, with the defendant in fact having “admitted in his written statement that they are in possession of the disputed house”.

As regards the house having been purchased from any funds of a partnership firm, it was found by the trial Court that no partnership deed had been placed on record to show that the firm was being run jointly and in fact the appellant-defendant, while testifying, had admitted that the house was

registered in the name of his father and he himself had no document available with regard to any payment made from the firm towards the purchase of the house.

It was further found that DW-2, Babu Ram, had stated in his cross-examination that a family settlement was arrived at between the plaintiff and his son in the years 2008-09, though as per the appellant himself, the oral family settlement had been arrived at in 2005.

In any case, holding that the documentary evidence in the form of a sale deed would override any oral settlement, in terms of Section 91 of the Indian Evidence Act, the respondent-plaintiff was found to be owner in possession of the house in question and therefore, held entitled to the injunction he sought.

With the primary issue held in favour of the plaintiff, the other issues were also held in his favour, (without too much discussion on them).

Consequently, the suit was decreed in his favour.

The present appellant having filed an appeal first before the learned District Judge, Karnal, that Court, after noticing the pleadings and the evidence led by the parties, eventually came to the same conclusion as had the trial Court, further noticing that a dissolution deed, Ex. P-6, showed that the firm had been dissolved in the year 1997, but in any case, the documentary evidence as regards the house in question, showed the respondent-plaintiff to be the owner thereof.

Consequently, the appeal was dismissed.

Before this Court, Mr. Parminder Singh, learned counsel for the appellant, reiterates that the house was actually purchased out of “joint funds” of the firm of which the appellant and his father initially were partners, and

therefore, the findings of the courts below are wholly perverse in that regard.

He further submits that the respondent admitted in his cross-examination that the appellant earlier had a 40% share in the firm, after which according to the plaintiff he became the sole proprietor of the firm, whereas the contention of the appellant was that in fact he had taken over the firm.

Having considered the aforesaid arguments, without going into the factum of who became the successor, i.e. the proprietor, of the firm after the partnership stood dissolved (or was withdrawn from by either party), that not being germane to the issue in view of the fact that no evidence whatsoever was led to the effect that the house in question had been purchased in the year 1985 from any funds of the firm, I see no reason to entertain this appeal, the learned courts below having come to a concurrent finding of fact on the basis of the sale deed in favour of the respondent-plaintiff, that the house was purchased by him, with the sale deed executed solely in his single name, which even the appellant, while testifying, could not deny.

Consequently, finding no merit in the appeal, it is dismissed in *limine*.

October 12, 2018
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes