

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.959 of 2016 (O&M) and
XOBJC-2-C-2017

Date of Order:09th May, 2018

Rajwati and another

...Appellants

Versus

Sukhi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Johan Kumar, Advocate,
for the applicant-respondents/cross-objectors.

Mr. S.K.Chauhan, Advocate,
for the appellants.

ANIL KSHETARPAL, J.

This judgment shall dispose of Regular Second Appeal No.959 of 2016 and cross-objection No.2-C-2017, filed by the plaintiffs-appellants and defendants-cross-objectors.

In the considered opinion of this court, following substantial question of law arise:-

- (i) Whether a person who subsequently acquires absolute title can be permitted to challenge the lease deed for a period of 99 years executed by him on the ground that on the day, he executed the lease deed, he was not competent to execute?
- (ii) Whether an executant of the document/deed/instrument can be permitted to challenge the same on the ground that he was not competent to execute?

- (iii) Whether a suit for a mere declaration and permanent injunction is maintainable when plaintiff(s) is/are entitled to further relief of possession but do not seek the further relief?

Certain facts would be necessary to understand the controversy involved.

Gajender etc. including Bhudutt, Ramkali, Deep Chand and Rameshwari were “Dholidars” on agriculture land situated in village Solda Tehsil and District Palwal. Dholi is a tenure of a particular kind. Normally it is a rent free grant given by the proprietors to the persons who are working for the benefit of the community like working in a temple, mosque, shrine or at any religious place. Such dholidars enjoy possession and usufruct of the land given to them without payment of any lease in lieu of services rendered by them. However, if they stop rendering services, such grant is revokable.

In state of Haryana by an Act of 2010, such like persons have been conferred ownership by passing the Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting of Property Rights) Act, 2010. It is a different matter that the vires of the aforesaid act have been challenged and pending for adjudication.

Certain Dholidars executed a registered lease deed dated 13.09.2001 in favour of defendants for a period of 99 years while leasing out the property at Rs.4000/- per year and received a sum of Rs. 3,96,000/-. In other words, entire lease money for 99 years was received in advance and defendants were put in possession of the land in question. After 2010 Act, as noticed earlier, four out of various dholidars who had become owners,

executed two registered sale deeds dated 12.02.2014 and 18.06.2014, selling land measuring 29 kanals and 18 marlas in favour of the plaintiffs. It was specifically recorded in the registered sale deeds that some part of the land being sold to them is on lease. Even in the revenue record, pursuant to the lease dated 13.09.2001 entries were made in favour of the defendants.

Plaintiffs, the purchasers, filed a suit for declaration and permanent injunction claiming that the lease deed for a 99 years executed by their predecessors was illegal, null and void as dholdars were not entitled to lease out the property for a period of 99 years as it amounts to permanent alienation which is not permissible under the law.

Defendants contested the suit and pleaded that they are lessees over the land and they are entitled to remain in possession of the land pursuant to the lease deed. Defendants even pleaded that the sale deeds executed in favour of plaintiffs were null and void. Maintainability of a mere suit for declaration and permanent injunction without further relief of possession was also questioned.

Learned trial court decreed the suit and held that the lease deed executed by predecessor in interest of the plaintiffs, the then Dholdars was against law and therefore set aside the lease deed.

Defendants filed the first appeal. First appeal filed by the defendants has been accepted by the learned first appellate court on the ground that mere suit for declaration without seeking further consequential relief of possession is not maintainable in view of proviso to Section 34 of the Specific Relief Act. That is how regular second appeal and cross objections have been preferred.

Now the stage is set to consider the questions of law:-

QUESTION NO.(I) & (II)

- (i) ***Whether a person who subsequently acquires absolute title can be permitted to challenge the lease deed for a period of 99 years executed by him on the ground that on the day, he executed the lease deed, he was not competent to execute?***
- (ii) ***Whether an executant of the document/deed/instrument can be permitted to challenge the same on the ground that he was not competent to execute?***

It is not in dispute that dholidars had executed registered lease deed for a period of 99 years. Plaintiffs are representatives of the aforesaid dholidars who subsequently acquired title pursuant to an act enacted by Haryana Government in the year 2010. In the considered opinion of this court, plaintiffs who have stepped into the shoes of lessor, could not challenge the registered lease deed executed by their predecessors on the ground that the then aforesaid dholidars were not competent to execute the registered lease deed. Section 115 of the Evidence Act would estop the plaintiffs to challenge the lease deed.

A suit for declaration on their behalf would be barred by principles of estoppels. Section 115 of the Evidence Act is extracted as under:-

115. Estoppel - *When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. Illustration A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards, become the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want to title.*

In view of the aforesaid the suit filed by the plaintiffs was not maintainable.

Still further this issue can be examined from another angle. Transfer by an unauthorised person who subsequently acquires interest in the property, is liable to honour the transfer and cannot be permitted to subsequently say that on the date he transferred the interest, he was not entitled to transfer. Reference in this regard can be made to Section 43 of the Transfer of Property Act. The principle which emerge from careful reading of Section 43 of the Transfer of Property Act(extracted as under) is that if any transfer is made by an unauthorised person, who subsequently acquire interest, the transfer of interest shall continue to operate at the option of the transferee. This principle has a direct connection with rule of estoppel as envisaged under Section 115 of the Evidence Act. Section 43 of the Transfer of Property Act is extracted as under:-

43. Transfer by unauthorized person who subsequently acquires interest in property transferred.-

Where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Still further this issue can also be examined in the context of Section 13 of the Specific Relief Act, 1963 which deals with rights of purchasers or lessee against persons with no title or imperfect title. It is provided that if a person contracts to sell or give on lease certain immovable properties having no title or an imperfect title then when the

vendors or the lessor subsequently acquires interest in the property, the purchaser or the lessee may compel him to make good the contract out of such interest. Section 13 of the Specific Relief Act, 1963 is extracted as under:-

13.Rights of purchaser or lessee against person with no title or imperfect title.—

(1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely:—

(a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other person is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lesser in the property which is the subject -matter of

the contract.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.

A commutative reading of the aforesaid 3 statutory provisions, it is clear that a person who was having imperfect title or no title, subsequently acquires any title, right or interest, shall remain bound by the contract he entered into. A person who has represented to the other and have executed the instrument cannot subsequently turn around and claim setting aside of the same on the ground that he had no title or a imperfect title.

In view of the aforesaid discussion, question no.(i) and (ii) are answered in favour of the cross-objector-defendants.

Question No.(iii)

Whether a suit for a mere declaration and permanent injunction is maintainable when plaintiff(s) is/are entitled to further relief of possession but do not seek the further relief?

Learned counsel for the appellant has submitted that suit filed by the plaintiffs was maintainable as the plaintiffs can at the most be declared owners and therefore, relief of possession could not be sought for by the plaintiffs.

In the considered opinion of this Court this issue is academic in view of the conclusion drawn above, however, required to be answered.

Defendants are not co-owners/co-sharers. They are only holding lease hold rights. Plaintiffs purchased 29 kanals 18 marla land . Plaintiffs were not co-sharers in the khewat when they purchased rights with respect to the land which was on lease. Plaintiffs were required to further seek consequential relief of possession in view of proviso to Section 34 of the Specific Relief Act. Since plaintiffs failed to seek the aforesaid relief of

possession, first appellate court has rightly concluded that the suit filed by the plaintiffs was barred in view of proviso to Section 34 of the Specific Relief Act. Once plaintiffs had pleaded that the lease deed is declared null and void, which on being granted, the possession of the defendants would have become unauthorised and hence plaintiffs were required to seek further relief of possession from the defendants. Section 34 of the Specific Relief Act is extracted as under:-

34. Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. *Explanation.*—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

In view of the aforesaid discussions, the judgments passed by the courts below are modified, the judgment passed by learned first appellate court is upheld for additional reasons given by this court. The suit filed by the plaintiffs shall stand dismissed.

The cross objection filed by the defendants is allowed, whereas regular second appeal filed by the plaintiffs is dismissed.

09th May, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No