

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

Date of decision: 20.7.2018

1. **RSA No.153 of 2018(O&M)**

DharampalAppellant

VERSUS

Nand Lal (deceased) through his LRs and othersRespondents

2. **RSA No.222 of 2018(O&M)**

DharampalAppellant

VERSUS

Subhash and othersRespondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. N.C. Kinra, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

This order will dispose of RSA Nos.153 and 222 of 2018 as these have emerged out of the same judgments and decrees passed by the Courts whereby suit for possession filed by Dharampal (appellant herein), counter claim filed by Nand Lal – defendant No.2 separately registered as Civil Suit No.43 of 10.01.2003 and suit for injunction filed by Ved Parkash titled **Ved Parkash Vs. Dharampal and another** were disposed of vide common judgment and decree dated 07.10.2009 passed by the trial Court that led to filing of two appeals by unsuccessful plaintiff/appellant

Dharampal. For the sake of convenience, facts are taken from RSA No.153 of 2018.

Dharampal- appellant claimed ownership of the suit property on the basis of sale deed dated 14.03.1995 executed by his father Sh. Chaman Lal Khurana. The Courts have rejected plea of the appellant in regard to his claim of ownership on the premise that the suit property was previously owned by Custodian Department and it was purchased in the name of Nand Lal brother of Chaman Lal as per sale certificate dated 30.04.1965, therefore, Chaman Lal was not competent to transfer ownership rights in favour of the appellant.

The Court in appeal in paras 21 and 22 of the judgment has held, quoted thus:-

“21. As per the plaintiff’s version, the suit property was purchased by Chaman Lal in the name of Nand Lal, his brother benami and he had paid Rs.4924/- towards adjustment of compensation due. The plaintiff has also relied upon power of attorney Exhibit P3 and its translation copy Exhibit PW-3/A by virtue of which Dharam Chand Sapra had appointed Chaman Lal as his attorney to use certificate of admissibility to purchase any property in his name or to associate any other person in purchase of said property. Chaman Lal utilized that certificate to purchase the suit property in the name of Nand Lal and utilized the certificate of admissibility. A perusal of Exhibit DW-8/28 which is the copy of register of Acquired Urban Evacuee Immovable property other than Agricultural property reveals that Nand Lal and Dharam Chand Associate have purchased the suit property in lieu of Rs.6200/- and an amount to the tune of Rs.4924/- has been adjusted. Thus, from these documents, it is clear that Chaman Lal was never authorized to purchase the suit property in his name by using the certificate of

admissibility and he was not competent to claim his ownership on the basis of power of attorney Exhibit P3.

22. In this case, the plaintiff has claimed that the suit property was purchased by Chaman Lal in the name of Nand Lal benami and it was Chaman Lal who is the real owner of the suit property. However, after the commencement of Benami Transaction (Prohibition) Act, 1988 such plea cannot be taken particularly when it is not the case of the plaintiff that the suit property was purchased in favour of Nand Lal being the coparcener in Hindu Undivided Family and the property is held for the benefit of coparcener in the family nor any plea has been taken that property has been purchased in the name of Nand Lal as a trustee who stands in fiduciary capacity and in-fact the suit property was purchased for the benefit of another person. This plea is further demolished from the document Exhibit P4, which is an agreement of sale between Nand Lal and Chaman Lal in which Nand Lal has agreed to sell the suit property to Chaman Lal on 10.5.1960 but no effort has been made by Chaman Lal to get the suit property transferred in his favour in pursuance of agreement of sell Exhibit P4 even after issuance of sale certificate. In these circumstances, Chaman Lal was not competent to transfer the suit property to Dharampal and this fact has been rightly observed by learned Additional Civil Judge (Sr. Divn.), Meham in right perspective. So, the sale deed dated 14.3.1995 Exhibit P5 is illegal, null and void and is just a waste paper. So, the question no.1 posed before this Court stands answered accordingly.”

Counsel for the appellant has failed to point out any materials on record to substantiate his plea that suit property was actually purchased by Sh. Chaman Lal though the sale certificate was issued in favour of Nand Lal. He has also not disputed the document Ex.P4, an agreement of sale between Nand Lal and Chaman Lal whereby Nand Lal had agreed to sell

the suit property to Chaman Lal but Chaman Lal did not get that agreement of sale specifically enforced even after issuance of sale certificate on 30.04.1965 in favour of Nand Lal. I do not find an error much less perversity in concurrent findings recorded by the Courts when otherwise the present appeal does not give rise to a question of law that needs determination in regular second appeal.

For the foregoing reasons, the appeals fail and are accordingly dismissed in limine. No order as to costs.

JULY 20, 2018		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no