

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

RSA-3126-2018 (O&M)
Date of Decision:-22.5.2018

Garib Dass

... Appellant

Versus

Jerish Masih

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Rajesh Punj, Advocate for the appellant.

GURVINDER SINGH GILL, J.

1. Aggrieved by dismissal of his appeal vide impugned judgment and decree dated 27.3.2018 passed by learned Additional District Judge, Chandigarh, whereby decretal of suit filed by the respondent-plaintiff Jerish Masih has been upheld, the appellant-defendant has filed the present appeal.
2. The case set up by the plaintiff, as per his plaint, is that he had purchased the suit property in the year 1990 vide registered sale deed dated 29.10.1990 (Ex.P-4) and thereafter his name came to be reflected in the revenue record in the shape of Jamabandies (Ex.P-2 and P-3). The plaintiff asserted that on 2.2.2011, he came to know that the defendant, who is his brother-in-law had raised construction in the nature of a shed upon the suit property and despite having been requested to hand over possession of the demised premises, he

did not do so, constraining the plaintiff to file the present suit. The suit was resisted by the defendant, wherein a plea of adverse possession was taken.

3. The parties were put to proof on the following issues:-
 - i. Whether the plaintiff is entitled for decree for recovery of possession as prayed for? OPP
 - ii. Whether the suit is not maintainable? OPD
 - iii. Relief.
4. The plaintiff apart from himself stepping into witness box as PW-1 examined PW-2 Mamta Sharma, PW-3 Ashok Kumar, PW-4 Ravinder Singh, Junior Assistant, Municipal Corporation, PW-5 Bhag Chand, Clerk, PW-6 Vikas Kumar, PW-7 Harjit Singh, Patwari and PW-8 Neeraj Ghai, Food and Supply. On the other hand, the defendant himself stepped into witness box as DW-1 and examined DW-2 Kishori Lal and DW-3 Mustakh Ali.
5. The learned lower Court upon appreciating the evidence on record did not accept the plea of adverse possession as raised by the defendant and consequently decreed the suit for possession filed by the plaintiff. The lower Appellate Court affirmed the said findings vide impugned judgment dated 27.3.2018, which has been assailed by way of filing the present appeal.
6. The learned counsel for the appellant, while assailing the impugned judgment, has first of all submitted that the present suit has been filed through brother of the owner namely Wilson, whereas the Special Power of Attorney did not authorize him to file a suit. The learned counsel in this context has drawn the attention of this Court to a copy of General Power of Attorney annexed with the appeal as Annexure A-3. The relevant extract

from the first paragraph of the said General Power of Attorney reads as under:-

“..... My brother Wilson s/o Mr. Satpal, r/o Jatpur Jattan, District Hoshiarpur, Punjab, India, as my true and Lawful attorney to file FRI and fight my case in the COURT OF LAW IN PUNJAB, INDIA against MY LAND DISPUTE, located at Mohala New Darshni Bahg, Mani Majra (Union Territory), Chandigarh, Punjab, India to act and manage the entire control of my said land measuring 0-6 Marlas in my name and on my behalf to do all or any of the following acts, deeds and things, in regard to defend my right in the above mentioned property.....”

7. The learned counsel, while referring to the aforesaid portion of the said General Power of Attorney has submitted that in fact as per the said General Power of Attorney, the plaintiff had authorized his brother to institute a suit in the Courts at Punjab only and not in Chandigarh, whereas the present suit having been filed in Chandigarh cannot be said to have been filed by a duly authorised person.
8. I have considered the aforesaid submission and have also perused the said General Power of Attorney.
9. A perusal of the very first paragraph of General Power of Attorney shows that though the executant has indeed mentioned that he authorizes his brother to file any case in the “Court of Law in Punjab, India” but further while describing the land in dispute, he has described the said property as Mohalla New Darshni Bagh, Mani Majra (Union Territory), Chandigarh, Punjab, India. The aforesaid description of the demised premises, though in Chandigarh, but stated to be falling in State of Punjab shows that it was

either on account of a *bona fide* error that the Court where the case is to be instituted or pursued is mentioned as Punjab. In any case, a perusal of clause “B” of the said power of attorney shows that the executant had specifically authorized the attorney to appear and act in all the Courts Civil, Revenue or Criminal without specifying any State and which would also indicate that the executant intended to fully authorize the attorney to pursue his cases in any Court including Chandigarh. Thus the aforesaid submission is found to be devoid of merits and is repelled.

10. During the course of arguments, it was also submitted that in fact the said General Power of Attorney had been given only for the purpose of the partition proceedings but a perusal of the said General Power of Attorney does not indicate that the same was for any limited purpose. It has next been submitted on behalf of learned counsel for the appellant that in fact the description of the property as mentioned in the sale deed (Ex.P-4) does not fully match with the suit property and in these circumstances it cannot be said that the plaintiff was indeed owner of the demised premises on the basis of the sale deed in question. The aforesaid arguments does not lie in the mouth of the appellant-defendant, who has himself taken a plea of adverse possession necessarily indicating that the ownership of the plaintiff over the demised premises is not being disputed.
11. While considering the plea of adverse possession, it goes without saying that the defendant-appellant was required to establish his continuous possession for a period of more than 12 years and such possession which is hostile and within the knowledge of the plaintiff. In the present case, the plaintiff has specifically asserted that it was on 2.2.2011 that they came to know about

that the defendant had raised a shed over the demised premises. There is nothing on record from which it can be said with certainty that the defendant had been in possession over the suit property even prior to the said period.

12. In these circumstances, I do not find any infirmity in the findings of the learned lower Court as regards the defendant having been unable to establish his case of adverse possession over the suit property, which have been duly affirmed by the learned lower Appellate Court. There is no merit in this appeal and the same is hereby dismissed.

22.5.2018

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No