

**RSA No. 4536 of 2017 (O&M),
RSA No. 4553 of 2017 (O&M) and
RSA No. 4557 of 2017 (O&M)** :1:

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 4536 of 2017 (O&M)
Date of decision : January 19, 2018

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Santosh Kumari and others
.....Appellants

Versus

Yadvindra Public School Association, Patiala
through its Secretary/PrincipalRespondent

RSA No. 4553 of 2017 (O&M)

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Santosh Kumari and others
.....Appellants

Versus

Yadvindra Public School Association, Patiala
through its Board of Governor and Principal
and othersRespondents

RSA No. 4557 of 2017 (O&M)

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Santosh Kumari and others
.....Appellants

Versus

Yadvindra Public School Association, Patiala
through its its Secretary/Principal and anr.
.....Respondents

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BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Rishab Gupta, Advocate for the appellant.

Mr. Kanwalvir Singh Kang, Advocate for caveators.

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RITU BAHRI, J.

C.M No.11841-C of 2017

Prayer made in the application is for condonation of delay of 24 days in re-filing the appeal.

For the reasons mentioned in the application, C.M is allowed.

Delay of 24 days in re-filing the appeal is hereby condoned.

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RSA No. 4536 of 2017 (Santosh Kumari and others vs. Yadvindra Public School Association, Patiala through its Secretary/Principal), RSA No. 4553 of 2017 (Santosh Kumar and others vs. Yadvindra Public School, Patiala and others) and RSA No. 4557 of 2017 (Santosh Kumari and others vs. Yadvindra Public School Association, Patiala and another) shall be decided through this common order as a common question of law arises for determination in these appeals.

The appellants have come up in the present appeals against the judgment dated 18.3.2017 passed by the Additional District Judge, Patiala, whereby the appeals filed against the judgment dated 31.3.2014 passed by the Civil Judge (Jr. Division), Patiala had been dismissed. Vide the

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judgment of the trial Court, suit filed by the respondent-plaintiff (hereinafter referred to as 'the plaintiff') for possession and permanent injunction had been decreed. Plaintiff was held to be owner in possession over the suit property and the appellants-defendants (hereinafter referred to as 'the defendants') were restrained from interfering in the possession of the plaintiff over the same.

Briefly stated, the facts of the case are that a suit was filed by Y.P.S Association stated to be a registered Society, through its Secretary who was also the Principal of the School. As per the plaint, the property including the suit property was granted to the plaintiff by the Govt. of Punjab vide grant deed dated 16.1.1969. The said property was already in the possession of the plaintiff school since 1948. The old furniture and articles of the plaintiff were lying in the suit property. In the servant quarter and out houses, some of the employees of the plaintiff school were residing with their families. Some of the rooms were lying closed and they were in possession of the plaintiff. Portion measuring 468 square feet comprising of two rooms and a closed verandah was in illegal possession of one Chandrika and a separate suit for possession had been filed by the plaintiff in this regard. Suit filed by the plaintiff for declaration as owner in possession on the basis of the grant deed dated 16.1.1969 against the State of Punjab was decreed and upheld up to First Appellate Court. The defendants were claiming their title through Smt. Dayawanti who had filed a suit for declaration and permanent injunction which was dismissed and proceedings were decided against Smt. Daya Wanti up to the High Court.

The defendants in connivance with each other tried to negotiate the sale of

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the property in dispute and also tried to take possession thereof. Criminal proceedings were lodged against the employees of the plaintiff school illegally. The suit was filed by the plaintiff as the defendants and their servants and agents were trying to interfere in the peaceful possession of the plaintiff over the suit property.

Defendants by filing written statement denied that the plaintiff-association is a registered Society or whether the Principal is authorized to file the suit. It was denied that the property was granted to the plaintiff vide grant deed dated 16.01.1969 or that the plaintiffs were already in possession over the same. It was further stated in the written statement filed by the defendants that the said Grant deed was a forged and fabricated document. It did not relate to the property in dispute. Admittedly, five servant quarters were in possession of the plaintiff school. The plaintiff took the forcible possession of two rooms and verandah on 15.9.1999. Chandrika Parshad was the employee of Rajan Kumar, who is a licensee of Smt. Daya Wanti. On 15.9.1999, the employees of plaintiff had applied their locks on two rooms which were bolted from inside by Chandrika Parshad who has been residing with his family in the said two rooms and also in other two rooms on the Northern side in which his household goods were lying. Chandrika Parshad informed Rajan Kumar about the same. He brought the matter to the notice of the school. The school assured him to remove the locks from the two rooms. However, on 16.9.1999 at about 12:00 p.m, 15 employees of the school came. They unbolted the doors of two rooms adjacent to the room Mark X & Y in which the family of Chandrka Parshad was living and placed the wooden furniture inside the

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rooms. Rajan Kumar reported the matter to the police and thwarted the efforts of the plaintiffs to take forcible possession of the entire area. FIR was registered against the employees of the school in this regard. The defendants were never a party to any of the litigation contested between the plaintiff and State of Punjab. Hence any judgment is not binding upon them. Defendants are the owners in equal share of the property measuring 1B-18-B comprised of Khasra No.285/1 in which one kothi and five quarters are built and remaining area is in the shape of an open yard. Revenue record reflects the ownership of the defendants. Mutation in this regard has been entered in the revenue record. Suit of Daya Wanti was dismissed under Order 17 Rule 3 CPC. The defendants had filed a separate suit for possession of five quarters which were alleged to be illegally occupied by the plaintiff-school. The plaintiff never challenged ownership vested with Daya Wanti.

On the basis of the pleadings of the parties, following issues were framed:

- 1) Whether the plaintiff is entitled to declaration as prayed for ? OPP
- 1-A) Whether the plaintiff is entitled to claim the relief of permanent injunction as prayed for ? OPP.
- 2) Whether the suit is not maintainable in the present form? OPD.
- 3) Whether the suit is not within limitation? OPD
- 4) Whether the suit is barred under Order 2 Rule 2

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CPC ? OPD.

5) Relief.

The plaintiff examined PW-1 Col. K.D Dutta through his duly sworn affidavit Ex. PW1/A, who reiterated the averments made in the plaint. He specially deposed that the suit property was granted to the school by Govt. of Punjab vide grant deed dated 16.01.1969. PW-2, Ram Lal, Registration Clerk proved on record grant deed Ex. PW.2/A. During cross-examination, he admitted that there is no authorization on record with the Chief Secretary, Punjab to execute the grant deed. PW-3, Vidya Sagar was the Clerk, office of PWD B&R, Patiala, who proved on record documents Ex.PW3/A to Ex.PW3/C.

As per the Grant Deed dated 16.01.1969, Ex. PW2/A, the property was transferred and conveyed to the school. The School was required to obtain a certificate from PWD Department to the effect that the buildings are maintained properly. It was further undertaken by the school to use the premises only for the purpose of the school and in the event of the failure of the plaintiff to use the premises as such, it shall revert back to the State. The grant deed was executed under the Govt. Grants Act, 1885. Description of property was attached with the Grant Deed which included three buildings of the old Army headquarters . Plaintiff also examined PW-3 Vidya Sagar to prove that the copy of blue print/site plan attached with the grant deed dated 16.1.1969 is Ex.PW3/C. As per the judgment dated 22.5.1989 (Ex.P-4) passed in the suit titled 'Y.P.S vs. State of Punjab', the plaintiff school filed a civil suit for declaration and injunction to the effect

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that the plaintiff-School filed a civil suit for declaration and injunction to the effect that the plaintiff school is the owner in possession of the Yadwindra Stadium, Cycle Trac and three blocks of old Army Head quarter on the basis of grant deed dated 16.1.1969. In this suit it was held that the property in dispute was transferred to the plaintiff under the grant deed dated 16.1.1969 and also that the plaintiff school is the owner in possession of the property in dispute. The suit was decreed in favour of the plaintiff-school vide judgment and decree Ex.P-4 and Ex.P-5. An appeal filed by the State of Punjab against the same was dismissed vide judgment Ex.P-6. Hence as per these judgments, plaintiff was held to be in possession since 16.01.1969. The defendants were required to prove that the plaintiff had been dispossessed and Captain Amrinder Singh assumed the possession over the suit property. Captain Amrinder Singh was the owner of the land as the said land in dispute fell in Lal Bagh area. As per a covenant Ex. D-32 executed between the State of Punjab and the erstwhile ruler of State of Punjab, Lal Bagh Kothi was retained by the then Maharaja Patiala as his personal property. The then Maharaja Patiala was owner of the land falling in Khewat No. 426/520, Khasra No. 285. He had gifted the land measuring 56-B-18-B falling in Khasra No. 285/1 in favour of Amrinder Singh son of Yadwinder Singh (vide gift deed dated 11.09.1961 vide Mutation No. 7153 dated 17.09.1976). Captain Amrinder Singh, thereafter gifted the land measuring 1B-18-B in favour of Smt. Daya Wanti vide two registered gift deeds dated 17.9.1976 Ex.D2 and Ex.D3. The property in question formed a part of land measuring 1B-18B which was gifted to Smt. Daya Wanti by Captain Amrinder Singh and possession of the property was also delivered

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to Smt. Daya Wanti. Therefore, Daya Wanti was owner in possession of the suit property. After her death, the property devolved into the hands of the sons of Daya Wanti namely Rajya Vardhan, Rajya Yog Vardhan and Harsh Vardhan vide mutation No. 19991 Ex. D-19. This property was further sold to defendants no. 1 to 5 vide sale deed dated 5.03.2003 Ex.D-4. The possession was also delivered to the said defendants. Further it has also been observed that Smt. Daya Wanti during her life time had filed a civil suit for possession and permanent injunction against YPS. It was pleaded that on the basis of the gift deed dated 31.3.1976, Smt. Daya Wanti was owner in possession of the property except five quarters which were in the illegal possession of the plaintiff-School. The said civil suit was dismissed under order 17 Rule 3 CPC vide judgment dated 25.7.1987 which was upheld by the Appellate Court vide judgment dated 16.12.1988 Ex.P.1. A review petition against the said judgment was also dismissed vide judgment dated 26.07.1990 (Ex.P-3). A Revision against the said order was dismissed by a Full Bench of this Court in Dayawanti vs. Yadvindra Public School, 1996 (1) RLR 28. Since Dayawanti could not prove her ownership and possession over the suit property therefore, there is no proof of transfer of possession from Captain Amrinder Singh to Smt. Daya Wanti. Therefore, the gift deed and the subsequent sale deed in favour of defendants could not be relied into.

The defendants got examined DW-1, Barkha Lal Sharma Adv. Who was appointed as Local Commissioner in appeal titled, 'Darshan Kumar and others vs. YPS, Patiala'. He has tendered into evidence its report Ex. DW.1/1. It is reported by him that he had got prepared the memo of

appearance of the parties and inspected the spot with the help of Darshan Kumar. Darshan Kumar opened all the locks of the building. A site plan was prepared by him. It was held that the report of the Local Commissioner could not be relied as the said Local Commissioner had not prepared the detailed description of the property including the dimension and architecture of the same. No demarcation was carried out.

Defendants examined DW-3 Sanjay Mittal, who was residing in the vicinity of the suit property. During cross-examination, he stated that he never visited the house of Darshan Kumar nor he ever visited the property in dispute. He could not depose about the dimension and description of the suit property. The testimony of this witness was held to be immaterial and irrelevant. DW-4 Mahesh Inder Bansal deposed having business contacts with Rajan Kumar. He further deposed that Rajan Kumar used to operate from the premises in dispute and his employee Chandrika Parshas was also residing there. During cross-examination, he stated that he visited the property in dispute only once. The testimony of the said witness was not much believed as he could not disclose the month, date and time of his visit.

The trial Court decreed the suit of the plaintiff as plaintiff had duly established that a grant deed was executed in its favour vide which the suit property was transferred to the plaintiff School. Since, the property already stood transferred to the plaintiff-school who was owner in possession thereof since 16.01.1969, therefore, no such property could have been gifted to Smt. Daya Wanti by a third party. There was no evidence to show that the possession was ever transferred to Smt. Daya Wanti. Thus, it

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was held that Daya Wanti could not prove her title or possession over the suit property. The earlier ownership of the suit property with Captain Amrinder Singh had not been established. There was no litigation between Capt. Amrinder Singh and the School pertaining to the possession of the disputed five quarters. The employees had been acquitted in the criminal proceedings. There was no evidence to show that the defendants were in possession over the suit property. The defendants failed to establish the alleged possession of Capt. Amrinder Singh, Smt. Daya Wanti or legal heirs of Daya Wanti and subsequently of the defendants. The claim made by the defendants was that old Army Head Quarters and Lal Bagh Kothi were separate properties. Since Amrinder Singh did not have any connection with old Army Head Quarters, therefore, no such gift deed and sale deed pertaining to any property falling under old Army Head Quarter could have been executed.

Dayawanti during her life time had filed a civil suit for possession and permanent injunction against YPS. The said civil suit was dismissed under Order 17 Rule 3 CPC vide judgment dated 25.7.1987 which was upheld by the Ist Appellate Court vide judgment dated 16.12.1988 Ex.P1. Thereafter a review petition against the said judgment was dismissed vide judgment dated 26.7.1990 Ex.P-3. Revision against the said order was dismissed by a Full Bench of this Court vide order dated 22.9.1995 passed in CR No. 3247 of 1990 (Dayawanti vs. Yadvindra Public School).

The defendants miserably failed to lead evidence to show that they became the owners of the property which vested to the plaintiff YPS

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by the Grant deed dated 16.1.1969. The possession of the plaintiff stood proved by the judgment and decree dated 22.5.1989 P-4 passed in the civil suit titled as 'Y.P.S vs. State of Punjab'.

Both the Courts after going through the above said findings have given concurrent finding of fact that the plaintiffs are the owners and having possession of the suit property. Defendants are not concerned and not entitled to maintain possession of the suit property.

Lower Appellate Court dismissed the appeal filed against the judgment of the trial court by observing that the suit property stood transferred in favour of the plaintiff-School since 16.1.1969 and thereafter, no property could be gifted to Daya Wanti by any third party. The earlier ownership of Capt. Amrinder Singh had not been established.

While decreeing the suit of the plaintiff, the concurrent findings of fact have rightly been given that as per the grant deed dated 16.1.1969, the suit land was transferred by the State of Punjab to the plaintiff-School. The appellant-defendant cannot take any benefit of the sale deed executed by the legal heirs of Dayawanti. A civil suit filed by Smt. Daya Wanti during her life time for possession and permanent injunction against YPS was dismissed under order 17 Rule 3 CPC vide judgment dated 25.7.1987 which was upheld by the Appellate Court vide judgment dated 16.12.1988 Ex.P.1. A review petition against the said judgment was also dismissed vide judgment dated 26.07.1990 (Ex.P-3). A Revision against the said order was dismissed by a Full Bench of this Court in CR No.327 of 1990 on 22.9.1995.

In view of all that has been discussed above, the suit has been

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rightly decreed in favour of the plaintiff. No case is made out to interfere in the judgments passed by the Courts below. No substantial question of law arises for consideration in the present appeals. Hence they are dismissed.

19.1.2018 **(RITU BAHRI)**
ritu **JUDGE**

Whether speaking/reasoned	Yes
Whether reportable	Yes