

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

RSA No.4155 of 2018 (O&M)

Date of Decision: 20.09.2018

Ram Lubhaya

.....Appellant

Versus

Bachni

.....Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Ish Puneet Singh, Advocate for the appellant.

TEJINDER SINGH DHINDSA J.

Plaintiff, Bachni wife of Ajit Kumar Jakhu, filed a suit for mandatory injunction for directing the defendant, Ram Lubhaya, to deliver the vacant possession of property bearing House No.169, Sidharath Nagar, Nakodar Road, Buta Mandi, Jalandhar City. Consequential relief of permanent injunction was also sought restraining the defendant from alienating or transferring the suit property or handing over possession of the suit property to any other person.

In the suit, Ram Lubhaya, set-up a counter-claim to the effect that he is owner in possession of the suit property on the basis of adverse possession.

The Trial Court vide judgment dated 28.02.2014, decreed the suit of Bachni and dismissed the counter-claim of the defendant. Ram Lubhaya-defendant, preferred a civil appeal and which has been dismissed vide judgment dated 01.02.2018, passed by the learned Additional District Judge, Jalandhar and thereby affirming the judgment and decree of the Trial Court.

Resultantly, defendant-appellant Ram Lubhaya, is in second

appeal before this Court.

Brief facts of the case are that the plaintiff/respondent had averred in the suit that previously the suit property was owned by Param Preet Singh, and Hari Pal Singh and which was sold to the plaintiff/respondent vide sale-deed dated 08.06.1990, for valuable consideration. Such sale-deed had been got executed through Ram Lubhaya (appellant herein) and who had appeared before the Sub Registrar, Jalandhar, on behalf of the plaintiff/respondent and had got the sale-deed executed in her name. The entire sale consideration had been paid by the plaintiff/respondent to the sellers through Ram Lubhaya as she was living abroad. Possession of the suit property was also taken by Ram Lubhaya on behalf of Bachni from the sellers at the time of purchase. It was stated that defendant/appellant Ram Lubhaya was a close relative of the plaintiff/respondent i.e. being son of real brother of her husband. Under such circumstances, after purchase of the property, the plaintiff/respondent had permitted the defendant/appellant Ram Lubhaya to live in the suit property as a licensee. It was further stated that as and when plaintiff/respondent visited India alongwith her husband she used to live in the suit property. However, in February 2008, when plaintiff/respondent visited India, the appellant herein did not permit her to enter the suit property. Immediately thereupon plaintiff/respondent revoked the licence and called upon the defendant/appellant to vacate the suit premises and to deliver the vacant possession thereafter. Upon refusal, the suit was instituted.

Upon notice defendant/appellant took a stand that he had come into exclusive possession of the suit property on 01.09.1990 after dispossessing the plaintiff/respondent wrongfully and to her knowledge. It

was claimed that the defendant/appellant is in continuous, undisputed and uninterrupted exclusive possession of the suit property and his possession over the house is open, hostile and adequate for a continuous period of more than 12 years and as such he has become owner of the house in dispute on the basis of adverse possession. In the suit a counter-claim was set-up by the defendant-appellant seeking a declaration as owner in possession of the suit property on the basis of adverse possession. In the counter-claim, assertions were made which were on the lines of the written statement filed by Ram Lubhaya to the suit instituted by Bachni.

As has been noticed hereinabove, suit filed by plaintiff/respondent Bachni was decreed and the counter-claim was dismissed by the Trial Court. The judgment and decree of the Trial Court stands affirmed by the Lower Appellate Court.

Learned counsel representing the defendant-appellant Ram Lubhaya, has vehemently argued that the suit that had been filed by the plaintiff/respondent was not even maintainable. In support of such submission, counsel has stated that the suit had been filed on behalf of the plaintiff/respondent through General Power of Attorney holder Satish Kumar son of Joginder Pal. However, such General Power of Attorney in favour of Satish Kumar, had not even been adduced in evidence. It was only PW2 Hardeep Singh, who had stepped into the witness-box as General Attorney on behalf of the plaintiff/respondent. It is urged that under such circumstances, the suit ought to have been rejected at the very outset.

Learned counsel for the appellant has been heard at length and even the records of the case that were requisitioned have been perused.

In the considered view of this Court, no interference in the present case is warranted and the submissions raised by learned counsel

would be of no consequence.

It has gone uncontroverted that earlier in point of time a suit had been filed by the present appellant Ram Lubhaya, against the plaintiff/respondent for permanent injunction in respect of the same very suit property. Such suit was dismissed by the Trial Court. Certified copy of the judgment was placed on record as Exhibit PX. There would be no manner of doubt that the Trial Court could take judicial notice of such judgement Exhibit PX, which was per se inadmissible.

This Court has perused the judgment Exhibit PX, which found part of the record of the case and whereby a suit for permanent injunction pertaining to the suit property i.e. House No.169, Sidharath Nagar, Nakodar Road, Buta Mandi, Jalandhar City, had been filed by the appellant Ram Lubhaya and against the plaintiff/respondent Bachni and was dismissed on 12.02.2014. In the judgment the admissions made by Ram Lubhaya during the course of his cross examination has been adverted to and is to the following effect :-

“It is correct that as per sale-deed dated 08.06.1990, the property in dispute is owned by defendant. The certified copy of the sale-deed is Exhibit D1. I admit the defendant Bachni as the owner of the suit property.”

Further admissions recorded of Ram Lubhaya is to the following effect:-

“It is correct that possession was taken by me from the seller for and on behalf of the defendant”.

“It is correct that defendant and her husband allowed them to live in the property, as care taker”

“It is correct that when defendant and her husband visited India in the month of May 2008 I did not allow the defendant and her husband to enter in the house,

volunteer defendant and her husband never came to suit property.”

What clearly emerges is that in a previous lis initiated by the appellant herein Ram Lubhaya, he had admitted before the Court that the plaintiff/respondent Bachni Devi, was the owner of the suit property and that the possession thereof had been handed over to him only as a care taker. Learned counsel representing the appellant has very fairly conceded that an appeal that was preferred against the judgment at Exhibit PX, was also dismissed.

No infirmity as such in the view taken by the Courts below that the possession of the appellant herein Ram Lubhaya, over the suit property was not hostile. The plea of ownership set-up by the appellant on the basis of adverse possession has thus been rightfully rejected.

The execution of sale-deed dated 08.06.1990, in favour of the plaintiff/respondent is not even in dispute. The defendant/appellant accordingly was bound in law to handover the vacant possession of the suit property to plaintiff/respondent Bachni Devi.

The judgements passed by the Courts below are founded on valid and cogent reasoning.

Appeal is dismissed.

Pending application, if any, shall also stands disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

20.09.2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No