

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

**RSA No.6260 of 2017 (O&M)
Date of decision: 17.01.2018**

Ganeshi Ram

.....Appellant

Versus

Smt. Aadi Luxmi and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Inderjit Sharma, Advocate,
for the appellant.

Ritu Bahri, J.

This appeal has been directed against the judgment of reversal dated 30.11.2017 passed by the District Judge, Ambala, whereby appeal filed by plaintiffs (respondents herein) against the judgment & decree dated 11.01.2016 passed by the Civil Judge (Junior Division), Ambala, has been accepted and suit filed by the plaintiffs for declaration and permanent injunction has been decreed.

Plaintiffs (respondents herein) filed the aforesaid suit for declaration and permanent injunction to the effect that defendant No.1 (State of Haryana) had sold the suit property to the husband of plaintiff No.1 (Smt. Aadi Luxmi) as per Govt. Policy. It was to settle the persons having possession for the past so many years. For this purpose, a survey was conducted in 1996 by the Govt. whereupon husband of plaintiff No.1 was found to be in possession of plot/hut vide letter No.ESTO/917 dated 12.07.2002. Defendant No.1 had agreed to sell the Govt. land in excised

area and a conveyance deed had been executed by defendant No.1 in favour of husband of plaintiff No.1. It was duly registered at serial No.4736 dated 08.12.2004, Bahi No.1, Zild No.56, page No.131 at the office of Sub-Registrar, Ambala Cantt. Since then, the husband of plaintiff No.1 became owner in possession of the suit land. It was alleged that husband of plaintiff No.1 expired on 20.04.2010. Thereafter, plaintiffs (respondent Nos.1 to 4 herein) became owners of the suit property. Earlier, defendant No.3 had filed a suit for permanent injunction without impleading the present defendants, but arraying grandfather of husband of plaintiffs as defendant in that suit. In that suit, a decree was passed on 21.09.1992. The said decree has become infructuous and was not binding on the husband of plaintiff No.1 as it was obtained without impleading actual owners of suit property. Even as per the Govt. Policy, suit property was transferred in favour of the husband of plaintiff No.1. Once a conveyance deed was registered, the plaintiffs had become owners of the suit property, which was lawfully executed by defendant No.1. This deed was also binding upon defendant No.3. However, defendant No.3 being adamant to oust the plaintiffs, tried to disturb their possession over the suit property. However, he had no right to dispossess the plaintiffs. It was further stated that objections were filed by husband of plaintiff No.1 in the executing Court, but those were dismissed.

Upon notice, defendant No.1 failed to file any written statement and its defence was struck off vide order dated 25.05.2011. Defendant No.2 filed its written statement taking preliminary objections with regard to locus standi, concealment of material facts, clean hands and maintainability.

Defendant No.3 filed a separate written statement taking preliminary

objections with regard to maintainability etc. On merits, it was denied that any survey was conducted in the year 1996 and husband of plaintiff No.1 was ever found in possession of the plot/hut in dispute. It was stated that it was an open place in the shape of road berm and after the decree for perpetual injunction, R. Mugham (husband of plaintiff No.1) in active connivance with the staff of defendant Nos. 1 and 2 got a fictitious report of the possession of the property in question. The alleged sale deed, if any, was a result of fraud and collusion. All other allegations levelled by the plaintiffs in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiffs are entitled to decree for declaration as prayed for by them? OPP
2. Whether the plaintiffs are entitled to suit for permanent injunction as prayed for by them? OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
4. Whether the plaintiffs have not come to the court with clean hands and have suppressed the true and material facts from the court? OPD
5. Relief.

Before the trial Court, Sanjay Sharma, Registration Clerk appeared as PW-1 and brought the record of registration No.4736 dated 08.12.2004, which was a conveyance deed in the name of R.Mogum. He deposed that as per record, Ex.P1 and Ex.P2 were correct. Ex.P3 was the receipt issued by the Municipal Corporation, Ex.P4 was copy of death certificate of R.Mogum and Ex.P5 was the copy of ration card of the

plaintiffs. All those documents were proved to show that the plaintiffs were

legal heirs of R.Mogum. On the other hand, defendant No.3-Ganeshi Ram (appellant herein) appeared in the witness box as DW-1 and relied upon copy of judgment dated 21.09.1992 Ex.D1, decree sheet dated 21.09.1992 Ex.D2 and copy of order passed in execution petition No.73/08, titled as 'Ganeshi Rama vs. Chowdhari Solu Raj etc.' as Ex.D4. Plaintiff No.1-Aadi Luxmi while appearing as PW-2 stated her ignorance regarding the suit filed by defendant No.3 in 1987, judgment & decree dated 21.09.1992 as well as execution dated 28.08.2010.

Trial Court, after going through the evidence led by the parties, dismissed the suit on the ground that the conveyance deed dated 08.12.2004 was merely a photocopy and vide judgment and decree dated 21.09.1992 injunction was granted in favour of then plaintiff-Ganeshi (now defendant No.3), vide which defendants were restrained from making any hutment or any other construction. Now, the decree of declaration cannot be passed in favour of the plaintiff.

However, the lower appellate Court, while accepting the appeal, has observed that as per ration card Ex.P5, plaintiffs were the legal representatives of Shri R.Mogum. Even in the written statement filed by defendant No.3, there was no specific denial by him that the plaintiffs were legal heirs of R.Mogum. Moreover, execution of the conveyance deed Ex.P1 in favour of R.Mogum was duly proved by Sanjay Saini, Registration Clerk from the office of Joint Sub Registrar, Ambala Cantt. (PW-1). Hence, even though, photocopy of conveyance deed Ex.P1 was placed on record by the plaintiffs, the same could not be discarded, as execution thereof stood proved by registration clerk (PW-1). Vide judgment and decree dated 21.09.1992 Ex.D2, defendants were restrained from making any hutment or

construction. But, this decree could not be a bar to the plaintiffs to file a suit seeking declaration that as per conveyance deed Ex.P1, they are owners of the suit property. Reference was made to the judgment passed by Hon'ble the Supreme Court in **Surinder Kumar vs. Ishwar Dayal**, 1996 (2) Apex Court Journal 283, wherein it was held that where the situation was altered after passing of a decree of injunction, the decree would become unenforceable. Since the conveyance deed Ex.P1 had been duly proved, judgment and decree dated 21.09.1992 Ex.D2 would become inoperative. Further, reference was made to a judgment passed by this Court in **State of Punjab vs. Sanjogta and others**, (2001-2) PLR 610 (P&H), wherein it has been held that a third party has another remedy available to it to institute an independent civil suit for declaration of its title claiming therein the relief of temporary injunction to protect its possession. If a relief of temporary injunction had been granted, it would not be a bar under Rule 101 of Order 21 CPC. In another judgment passed by this Court in **Randhir Singh and others vs. Har Sarup and another**, 2007 (2) RCR (Civil) 403 (P&H), it has been held that the finding on the question of title in a suit for permanent injunction would not operate as *resjudicata* in a subsequent suit for declaration or possession. On the basis of above observations, the lower appellate Court accepted the appeal and decreed the suit of the plaintiffs.

After going through the impugned judgment, this Court is of the view that suit of the plaintiffs (respondents) has been rightly decreed by the first appellate Court as the plaintiffs have duly proved execution of the conveyance deed Ex.P1 in favour of Sh. R. Mogum. They have also proved on record that they were the legal representatives of Sh. R. Mogum.

Accordingly, no illegality, much less perversity, has been found in the

findings given by the lower appellate Court, which may warrant interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Resultantly, finding no merits, the present appeal is dismissed.

17.01.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No