

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

RSA No. 12350 of 2018(O&M)

Date of Decision:21.12.2018

Rajender

.....Appellant

Versus

Ram Singh and others

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Naresh Kumar, Advocate
for the appellant.

LISA GILL, J.

Appellant-defendant no.1 is aggrieved of judgment and decree dated 09.02.2015, passed by the learned Civil Judge (Jr. Division), Narnaul, as well as judgment and decree dated 04.12.2018, passed by the learned Additional District Judge, Narnaul, whereby suit filed by the plaintiff-respondent for permanent injunction and for possession has been decreed.

Brief facts necessary for the adjudication of the case are that plaintiff-respondent no.1 namely Ram Singh, filed a suit seeking permanent injunction against the defendants including the present appellant for restraining them from interfering in his possession of the property as detailed in the plaint and not to raise any construction and in case, construction is raised during the pendency of the suit, the same be demolished and decree for possession was also sought. It was pleaded by the respondent-plaintiff that he was the owner in possession of the land measuring 3 Marlas as detailed in the plaint. Original owner of the land was stated to be Subhash son of Sukhdev. An agreement to sell the said property was stated to be executed by Subhash son of Sukhdev in favour of the plaintiff on 05.04.2005. A sum of ₹25,000/- was received by Subhash son of Sukhdev as

consideration for the said land. Possession of the land, it was claimed was handed over to the plaintiff and Subhash son of Sukhdev agreed that the sale deed can be executed as per the wish of the plaintiff. Sale deed in question was indeed executed on 26.11.2010, Ex.PW3/A and mutation no. 1355 dated 20.12.2010, Ex.P-2 was sanctioned as well. Plaintiff claimed to have placed construction material over the suit land. Defendants, who were stated to be the family members of the original owner Subhash son of Sukhdev, having political rivalry with the family of the plaintiff wanted to grab the disputed plot in a forcible and illegal manner. Despite request, they did not desist from their efforts, due to which, the suit was filed.

Defendants filed written statement while resisting the suit. Various preliminary objections were raised. Averments on merits were denied. Defendants stated that earlier a suit for permanent injunction was filed by Banwari Lal, father of the defendants against the original owner-Subhash son of Sukhdev. Compromise took place between the parties on 23.09.2005. Possession of the property was alleged to have been handed over to defendant-appellant-Rajender. Sum of ₹22,000/- was handed over by the said defendant to Subhash son of Sukhdev, who handed over possession of the plot to Rajender on 23.09.2005. It was claimed that the defendant-Rajender had constructed a room thereon and was utilizing the land in dispute without any kind of interference. Defendant-Rajender was stated to be in open, peaceful, exclusive possession of the said plot measuring 3 Marlas. The alleged agreement to sell dated 05.04.2005, sale deed dated 26.11.2010 and mutation no.1355, were stated to be illegal, null and void qua the defendant-Rajender. Dismissal of the suit was prayed for.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is owner in possession of the suit property?OPP
2. Whether plaintiff purchased the suit through agreement dated 05.04.2005 and through the sale deed dated 26.11.2000?OPP
3. Whether plaintiff is entitled to get injunction as prayed for?OPD
4. Whether plaintiff has no cause of action?OPD
5. Whether suit is bad for non-joinder and mis-joinder of Subhash as necessary party?OPD
6. Whether defendants are entitled for special costs?OPD
7. Relief.

Both the parties led evidence in support of their respective stands.

Plaintiff-Ram Singh testified before the learned trial Court as PW-1. PW-2-Ram Chander, Registration Clerk, Sub Registrar Officer, Ateli proved sale deed dated 22.11.2010, Ex.PW3/A. He brought the summoned record relating to the said sale deed, which bore his signatures as well as stamp. PW-2 stated that both the parties appended their signatures in his presence. PW-3-Jeevan Ram Sanghi, Deed Writer, testified that agreement dated 03.04.2005 was typed by him on the direction of Subhas son of Sukhdev and the parties had appended their signatures in his presence. Original agreement to sell Ex.PW4/A was proved by him.

Defendants examined four witnesses. Copy of plaint in the civil suit titled as 'Banwari Lal Vs. Subhash' was tendered as Ex.D-1. Ex.D-2 is the copy of order dated 27.02.2005 in the said suit. The said suit was dismissed in default on 03.11.2007. Copy of which is available as Ex.D-3.

Learned tribunal on considering the facts and circumstances of

the case as well as the evidence on record held that the plaintiff had succeeded in proving his case. It was proved that the plaintiff was the owner of the property being a *bona fide* purchaser by way of sale deed dated 26.11.2010. It was further observed that the defendants did not challenge the sale deed neither filed any counter claim in the suit and further the defendants failed to prove their plea of adverse possession. Writing dated 23.09.2005, it was held did not prove any title in favour of the defendant-appellant. Accordingly, suit was decreed and the defendants were directed to handover the vacant possession of the suit property within three months of the passing of the order.

Appeal preferred by the present appellant-defendant no.1-Rajender was dismissed by the learned Additional District Judge, Narnaul, vide judgment and decree dated 04.12.2018.

Aggrieved therefrom, present appeal has been filed by the appellant-defendant no.1.

Learned counsel for the appellant vehemently argues that possession of the present appellant over the suit property is duly proved on the basis of the writing dated 23.09.2005, mark D-1. Compromise had taken place between Banwari Lal, father of the defendant, who had filed a suit for permanent injunction against Subhash son of Sukhdev, the original owner of the property. Learned counsel vehemently argues that in-fact the original vendor-Subhash son of Sukhdev did not have any right to sell the plot in question because the said plot was allotted to Subhash under a special scheme of the State of Haryana for landless persons. The land so allotted could only be inherited by legal heirs of the allottee and there is a specific

bar on sale of the plot. Therefore, Subhash son of Sukhdev who was the allottee of the plot by the Haryana Government being a landless person could not have sold the land to the plaintiff-respondent-Ram Singh. It is further contended that respondent-plaintiff-Ram Singh is a signatory to the compromise/writing dated 23.09.2005. Therefore, sale deed of the year 2010-11 in his favour clearly proves *mala fides*. Learned counsel further argues that the original owner was not even made a party to the present proceedings. It is thus prayed that the present appeal be allowed and both the judgments and decrees dated 09.02.2015 and 04.12.2018, be set aside. Consequently suit filed by the respondent no.1-plaintiff be dismissed throughout.

I have heard learned counsel for the appellant and have perused the photocopy of the record furnished by him in Court today.

Subhash son of Sukhdev, being the original owner of the plot in dispute is not in question. Ownership of Subhash son of Sukhdev is duly reflected in Ex.P-1 and Ex.P-3 i.e. copies of jamabandies pertaining to the year 2004-05 and 2009-10. Appellant accepts Subhash son of Sukhdev to be the original owner of the property in question. Plaintiff-respondent no.1 has duly proved on record agreement to sell, Ex.PW4/A as well as sale deed dated 26.11.2010, Ex.PW3/A by which Subhash son of Sukhdev sold the suit property in favour of the plaintiff-Ram Singh. Mutation no.1355, which was sanctioned on 20.12.2010 is also proved on record as Ex.P-2. There is no evidence on record to discredit or disbelieve the version of the plaintiff in this respect. There is no evidence on record to doubt the veracity of the documents as above. Appellant-defendant-Rajender has laid the foundation

of his defence on the basis of writing dated 23.09.2005, mark D-1, which is admittedly not even proved in accordance with law. A perusal of a photocopy of Mark D-1 reveals that it is a handwritten note, wherein it is stated that it was decided on 23.09.2005 before respectables of the village that Subhash son of Sukhdev has given his plot No. 425 measuring 4 Marlas to Rajender son of Banwari Lal for a sum of ₹22,000/- and possession thereof has also been given to Rajender. It is rightly held by both the learned Courts below that the defendant-appellant cannot claim title to the property on the basis of such a document which is not even proved in accordance with law.

Argument that said document dated 23.09.2005 was signed by Ram Singh-plaintiff, therefore, the appellant-defendant is proved to be the owner in possession thereof is indeed fallacious, misplaced and unsubstantiated. It is to be noticed, at this stage that the plaintiff-PW-1, was not even questioned regarding compromise dated 23.09.2005. This contention is thus rejected.

Doubtlessly, a registered sale deed executed in favour of the plaintiff has to be given due credence. Title of the property could not have been transferred by way of writing dated 23.09.2005. Another contention vehemently urged by learned counsel for the appellant is that Subhash son of Sukhdev could not have transferred the property in question to the plaintiff, as the plot was in dispute was allotted to Subhash son of Sukhdev under a special scheme of the State of Haryana whereby a specific bar was created to transfer of this property to anyone except the legal heirs of the allottee. Apart from the fact that learned counsel for the appellant is unable to point

out any evidence on record to substantiate this plea, it is to be noted that sale deed dated 26.11.2010 has not been challenged by the defendant. Moreover, if at all, it is for the State of Haryana to look into the matter and no benefit can accrue to the defendant-appellant on this account.

Similarly, plea of adverse possession sought to be raised by the appellant is devoid of any merit. There is no evidence on record to prove that the appellant-defendant remained in open, continuous and peaceful possession of the property in question, which was hostile or adverse to the true owner. Agreement to sell dated 05.04.2005, Ex.P-4, has been duly proved by the plaintiff-respondent. It is specifically stated therein that possession of the property was handed over to the plaintiff at that time. Subhash son of Sukhdev, was not in possession of the suit property on 23.09.2005. DW-1, has admitted possession of Subhash son of Sukhdev while DW-2 never remained in possession of the suit land. In the replication filed by the plaintiff, it was specifically stated that the appellant had taken forcible possession of the suit land on 27/28.03.2011. PW-1, the plaintiff reiterated this fact in his evidence. However, no suggestion to the contrary was even addressed to PW-1. It is thus rightly observed by the learned Additional District Judge, Narnaul that the plaintiff was dispossessed from the suit property during the pendency of this suit.

Learned counsel for the appellant-defendant no.1 is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 09.02.2015 and 04.12.2018 passed by the learned Civil Judge (Jr. Division) Narnaul and learned Additional District Judge, Narnaul, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

21.12.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.