

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

RSA No.2499 of 1988 (O&M)

Date of decision:08.04.2019

Sant Singh (D) through LRs

... Appellant

Vs.

Sardari Lal(D) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Kabir Sarin, Advocate
for the appellant.

Mr. Vijay Lath, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the concurrent findings of fact and law whereby suit of the respondent-plaintiff for possession as owner of a portion of house no.2883 (custodian no.2011) described in the plaint has been decreed by the trial Court and affirmed in appeal.

The respondent-plaintiff alleged that he was owner of the suit property and had entered into agreement to sell with defendant on 31.03.1967 for a total sale consideration of Rs.2300/- on receipt of Rs.1,000/-. The defendant was attorned as a tenant over the premises. However, the defendant filed the ejectment petition which was dismissed. It is in this background of the matter, the suit for possession was filed as the defendant failed to get the sale deed executed.

The defendant opposed the suit and asserted that suit property in dispute was vacant and plaintiff continued to be in possession of southern half portion of the property and remaining half portion continued to be in possession of the defendant. In the year 1974, defendant raised the construction after having obtained the sanction from the Municipal Corporation. The time was not essence as one of the conditions of the agreement to sell was of conferment of proprietary rights which fact was evident from the notice dated 05.10.1974 as by that time plaintiff did not acquire the proprietary rights. The objection qua Order 2 Rule 2 CPC was also taken .

Since the parties were at variance, the trial Court framed the following issues:-

- “1. *Whether the suit is barred by res judicata?OPD*
2. *Whether the plaintiff is owner of the suit property?OPP*
3. *Whether the defendant has become owner of the suit property by adverse possession for more than statutory period as alleged?OPP*
4. *Whether the defendant has attorned as a tenant in the disputed premises under the plaintiff on account of non-fulfillment of the agreement as alleged?OPP*
5. *In case the above issue is proved, whether the defendant has become liable to deliver possession of the suit property to the plaintiff on account of the denials of tenancy in the previous proceedings between the parties as alleged?OPP*

6. *Whether the plaintiff is guilty of acquiescence as alleged?OPD*

7. *Whether the defendant has constructed a new building in place of the old one. If so its effect?OPD*

8. *Whether the suit is barred under Order 2 Rule 2 CPC as alleged?OPD*

9. *Relief.”*

The additional issues were also framed by the Lower Appellate Court:-

“8-A Whether the defendant has failed to fulfill the terms of the agreement to sell between the parties as mentioned in para 2 of the plaint. OPP

8-B Whether plaintiff could not execute the sale deed for want of non conferment of proprietary rights on him as per terms of the agreement?OPD”

The plaintiff examined two witnesses whereas defendant four.

Mr. Kabir Sarin, learned counsel appearing on behalf of the appellant submitted that on receipt of the plaint, the appellant-defendant filed the application for amendment for protecting the possession in terms of the provisions of Section 53-A of Transfer of Property Act. Additional issues no.8-A and 8-B framed by the Lower Appellate Court were to find out as to whether the parties had failed to fulfill the terms and conditions of the agreement to sell or sale deed could not be executed on account of non-conferment of proprietary rights. Both the Courts below did not refer to the

legal notice Ex.P3 acknowledgment of non-grant of proprietary rights. The suit was filed only in the year 1982. The possession of defendant was liable to be protected in accordance with law and thus, urged this Court for setting aside the findings.

Per contra, Mr. Vijay Lath, learned counsel appearing on behalf of the respondent submitted that concurrent finding of fact and law cannot be interfered with until and unless there is gross illegality and perversity. The proceedings in ejectment petition and suit for possession are totally different as in the ejectment proceedings, the relationship of landlord and tenant was not proved. The filing of suit was itself a notice of conferment of proprietary rights as the defendant failed to seek specific performance either through independent suit or counter claim. This fact was admitted by him when subjected to cross-examination and thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that following Substantial Question of Law arises for adjudication of the present appeal:-

“Whether the judgments and decrees of the Courts below suffer from illegality and perversity amounting to mis-reading of the evidence both oral and documentary particularly Ex.P3?”

Ex.P3 is the notice of 05.10.1974 addressed by the plaintiff to the appellant-defendant acknowledging the factum that Custodian Department had not conferred the proprietary rights

It is a matter of record that respondent-plaintiff initiated the proceedings for ejectment against the appellant-defendant which was finalized on 05.04.1982 and the present suit was filed on 19.04.1982.

There would have been force in the argument of Mr. Kabir Sarin, had the appellant-defendant sought the counter claim seeking specific performance of the agreement to sell as the time was not essence of the agreement but relevant portion of the cross examination of appellant-defendant/Sant Lal extracted herein below:-

“Sale deed was not got executed by me from the plaintiff. Since the date of execution of the agreement of sale. However, I had been requesting for the same. I never issued any notice to the plaintiff in writing for the execution of the sale deed. Even now I have not issued any notice to the plaintiff to execute the sale deed although I came to know regarding his title deed which has been produced in this case. This fact was known to me by the statement of Gurdial Singh.”

leaves no manner of doubt that he never sent a notice to the plaintiff for execution of the sale deed. Filing of the suit was itself a notice giving cause of action for specific performance. Having failed to claim the appropriate right, agreement to sell would not confer any title. The possession was being taken in accordance with law, not forcibly.

In my view, the finding of fact and law in such circumstances cannot be said to be suffering from illegality and perversity. The Substantial Question of Law noticed above is answered in favour of the respondent-

plaintiff and against the appellant-defendant.

Resultantly, the regular second appeal is dismissed.

April 08, 2019

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No