

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

RSA No.1639 of 1994 (O&M)

Date of decision:31.01.2019

Radha Kishan

... Appellant

Vs.

Hari Kishan (since deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sunil Pawar, Advocate
for the appellant.

Mr. Rakesh Nehra, Advocate
for respondent No.1.

Mr. Amit Jain, Advocate with
Mr. Arnav K. Sood, Advocate and
Mr. Vaibhav Goel, Advocate
for respondent No.7.

AMIT RAWAL J.

The present Regular Second Appeal at the instance of appellant-defendant No.6 is directed against the judgment and decree dated 12.5.1994 whereby suit of the respondent-plaintiffs dismissed by the trial Court, has been decreed.

The plaintiff-Hari Kishan (since deceased) son of Deep Chand represented by his LRs Bhagwan Dass and Ram Kumar instituted the suit for declaration to the effect that plaintiff and defendants no.7, who was transposed as plaintiff no.2 and 8 were owners in possession of suit property comprising of three kothas, covered passage alongwith vacant land, detailed

in para no.1 of the plaint situated at Gharaunda as defendants no.1 to 6 did not have any right or concern with the consequential relief of permanent injunction seeking restraint and forcible interference with an alternative prayer of possession in case the defendants no.1 to 6 were found in possession of the suit property *inter alia* on the ground that property was purchased by their father late Deep Chand son of Shiv Karan Dass and one Har Narain Jain, vide registered sale deed dated 17.10.1937 from one Arjan son of Shamsheer Singh. The father of the plaintiffs had purchased 2/3 share of the land situated towards the South whereas Har Narain Jain 1/3 share towards North which was later on sold in favour of Rulia Ram. Thus, Deep Chand became the owner in possession of suit land to the extent of 2/3 share whereas Rulia Ram other 1/3 share. The four rooms alongwith covered passage was constructed by Deep Chand and after his death, his sons became the owners in possession of suit land. Deep Chand had transferred one room in favour of Bhagat Ram Barbar and the remaining property remained locked, due to lapse of time was in dilapidated condition. Two rooms in the building were let out; i.e. one room to one Sakil son of Karan Deen and other room to one Hari Kishan, the plaintiff has stored his fodder.

It was further alleged that defendant no.2 exercised undue influence while working as Secretary of Municipal Committee, Gharaunda and managed to get the name of Radha Kishan, defendant no.6 entered as owner in the record of Municipal Committee. There was dispute with regard to ownership and possession, much less the proceedings under Section 107/151 Cr.P.C were initiated against the plaintiffs and defendants no.1

to 6.

Defendants contested the suit by laying challenge to the locus standi, maintainability and suit was stated to be barred by law of limitation. It was pleaded that Radha Kishan/defendant no.6 had become the owner in possession of suit land by way of adverse possession. It was further clarified that previously an industry for cotton and ginning and oil mills was being run in the premises in dispute under the name and style of M/s Seth Ram Kumar Radha Kishan which was maintained by many partners including Deep Chand, father of the plaintiff, Janki Dass, Suraj Bhan, Ram Chander and Radha Kishan. Appellant-defendant no.6 purchased the share of the partners by virtue of the sale deeds.

Replication was filed and the trial Court framed as many as 11 (eleven) issues including additional issue 1-A. The plaintiffs brought on record copy of sale deed dated 17.10.1937 as Ex.P2 showing the ownership and various other documents whereas, appellant-defendant no.6 brought on record the sale deeds Ex.D6, Ex.D8, Ex.D10-A, whereby, he had purchased the share from all the partners and denied the title of Deep Chand. The trial Court on the basis of the oral and documentary evidence dismissed the suit.

Mr. Sunil Pawar, learned counsel appearing on behalf of the appellant-defendant no.6 submitted that the Lower Appellate Court has abdicated in decreeing the suit as without giving any finding on issue no.6 whereby, the trial Court held the suit to be barred by law of limitation. Issues no.4 and 5 were decided against the plaintiffs but remained unchallenged. The plaintiffs previously instituted the suit claiming to have

purchased the suit property but after written statement the suit was dismissed as withdrawn without seeking leave of the Court. DW5-Hukam Chand, attorney of Radha Kishan stated that building and the property in dispute was sold by the partners aforementioned in favour of Radha Kishan vide sale deeds, *ibid*, whereas plaintiffs failed to plead and prove that it was a property where industry was installed.

The sale deeds are of 1958 whereas suit was filed in 1984. DW1-Ram Parkash appeared and stated that he had sold the share in the industry *ibid* to the extent of $\frac{1}{4}$ share in favour of Radha Kishan, vide sale deed which was executed by him and his brother Suraj Bhan. Similarly DW2- Amir stated he was tenant in possession of one room and his landlord was defendant no.3. DW3-Chander Bhan proved the sale deed, Ex.D6 executed by another partner Janki Dass whereas DW4 Jagdish stated that industry was being run on the property but stopped working and in such circumstances, was sold by the partners in favour of Radha Kishan. DW7- Jai Singh proved the entry in the revenue record of Municipal Committee showing the ownership of the suit property in favour of Radha Kishan. DW9- Vijay Kumar Jindal proved the plaint in case of “Hari Singh vs. Banarsi”, civil suit 24 of 1984, Ex.DW9/A and the sale deed 3.6.1958, Ex.DW10. The original sale deed 17.10.1937 has not seen the light of day and therefore, could not have been looked into in the absence of any application for secondary evidence as mere exhibition of the document did not dispense with its proof. Even otherwise, the attesting witnesses of the sale deed were not examined much less there was no compliance of Section

69 of Indian Evidence Act and thus, urged this Court for setting aside the judgment and decree of the Lower Appellate Court.

In support of the aforementioned submissions, relied upon paragraphs 70 to 72 of the judgment rendered by the Hon'ble Supreme Court in **Jai Narain Parasrampuriah (dead) and others vs. Pushpa Devi Saraf and others 2006(3) Apex Court Judgments 612 (SC).**

Per contra, Mr. Rakesh Nehra and Mr. Amit Jain, learned counsel appearing on behalf of respondents no.1 and 7 supported the judgment and decree of the Lower Appellate Court to contend that entire land was of Deep Chand and there was no evidence that he had put the entire land in the ownership of partnership firm and therefore, the partners could have sold the same vide sale deeds, Ex.D6, Ex.D8 and Ex.D10-A. The sale was only with regard to machinery and the building and not of the land underneath. Once the defendants had taken the plea of adverse possession, deemed to have admitted the title of the plaintiffs and therefore, non-production of original sale deed would be immaterial. As on today, the land is lying vacant as Municipal Committee has not charged house tax from the year 1967. The sale was only of shares and not of the title in the suit land. The Lower Appellate Court being the last Court of fact and law clearly noticed that sale was not only of the land underneath Karkhana but of building and machinery. The executants of the sale deeds were not proved to be owners and therefore, they did not have saleable rights 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 both the Courts below and the law cited at bar with their able assistance and of the view that following substantial questions of law arise for adjudication of the present appeal:-

- i) Whether the vendors of the sale deed Ex.DW6, Ex.DW8 and Ex.DW10-A had saleable right or title ?
- ii) Whether the sale deeds could be construed of building, machinery and not the land underneath?
- iii) Whether the suit for declaration and possession in the absence of any title was maintainable resulting into perverse judgment and decree of the Lower Appellate Court?

During the course of arguments, both the learned counsels representing the parties to the lis read out the contents of the sale deeds, *ibid*, it is deciphered that sale was not only with regard to the machinery but building as well. The building cannot be erected in air but it has to be alongwith the foundation on the earth. If the sale deeds are to be construed only for machinery then there was no requirement of registration as provisions of Registration Act came into play only when the value of the land is more than Rs.100/-. The appellant-defendant no.6 had purchased share from all the three co-owners like Janki Dass, Deep Chand and Ram Parkash. The Hon'ble Supreme Court in paragraphs 70 to 72 of Jai Narain Parasrampur's case (*supra*) while dealing with the question of specific performance of the agreement to sell held as under:-

“70. One of the learned Judges of the High Court also opined that as the agreement to sell referred to only the house or the bungalow, the parties did not agree to sell the land. We have gone through the agreement for sale and are of the opinion that the views taken by the learned judge were wholly unwarranted. Apparently the respondents intended to sell what they had purchased. There is nothing in the averments of the agreement to suggest that the intention of the respondents was restricted to the house alone and not the lands. There was no basis for arriving at the said findings. In any event, expression 'the house' will also include the land appurtenant thereto.

71. In P. Ramanatha Aiyar's Advanced Law Lexicon, Volume 2, 2005, the word "house" has been defined to mean :

"HOUSE" means a house suitable for occupation by a Military Officer or a military mess. The term includes the land and buildings appurtenant to a house.

[Cantonment (House Accommodation) Act (6 of 1923), S. 2(f)]

"HOUSE" includes any building or part of a building with its appurtenances and outhouses used for any purpose whatsoever

[Orissa House Rent Control Act, 1967 (4 of 1968), [S. 2\(3\)](#)].

"HOUSE" includes -

(a) any part of a building occupied or intended to be occupied as a separate dwelling, and

(b) any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it [[Housing Act](#), 1996 (c. 52 1996), [S. 6B\(1\)](#)]"

In 'Word and Phrases, Permanent Edition, Volume 19A, it is stated :

"The word "building" necessarily embraces the foundation on which it rests; and the cellar, if there be one, under the edifice, is also included in the term "house" or "building". If there be a cellar, the word "building" includes it, unaffected by the height above the foundation *Benedict v. Ocean Ins. Co.*, 31 N.Y. 389, 394."

72. Furthermore, it is now well settled that the building includes the land on which it stands, unless by express stipulation it is excluded."

It defined that house would be suitable for occupation which includes building and part of the building with its appurtenances.

The Lower Appellate Court, in my view, has totally abdicated and committed perversity in misreading the contents of the sale deeds and forming the opinion that there was no intention to sell the land underneath much less it was never sold. The plaintiffs have miserably failed to prove the ownership of suit land in not producing the original copy of the sale deed dated 17.10.1937 nor any application for secondary evidence was filed, much less attesting witness or the relatives in terms of provisions of

Section 69 of Indian Evidence Act, was examined, nor any jamabandi in this regard was placed on record. Deep Chand had 3/16 share, Suraj Bhan and Ram Parkash $\frac{1}{4}$, Janki Dass $\frac{1}{8}$ and appellant/defendant no.6, $\frac{7}{6}^{\text{th}}$ share. In such circumstances, the land was deemed to have been put in the ownership of partnership, otherwise, they would not have executed the sale deed in respect of the building as well.

From the contents of the sale deed, Ex.D8, Deep Chand had sold his 3/16 share in the building installed therein, rather, the plaintiffs had not approached the Court with clean hands with regard to the industry installed over the suit property. It appears that they had the knowledge of the sale deeds but despite that no challenge was laid. It is settled law that a registered document carries a presumption of truth until and unless the same is not set aside by any order or decree.

PW6-Bhagwan Dass admitted that after the death of his father, Hari Kishan, cotton and ginning and oil mills was installed over the suit land which was run under the name and style of M/s Seth Ram Kumar Radha Kishan. Even if Radha Kishan had not purchased the entire property from all the partners, he came into effective possession over the suit property whereas Bhagwan Dass, PW6 claimed the ownership through Ex.PX. The entries in the revenue record also reflected Radha Kishan to be owner in possession of the suit land since 1967-68. No effort was made to correct the record. Since the plaintiffs had no right and title in the property, alternative relief of possession could not have been granted. Entire evidence and provisions of law have not been adverted to by the Lower Appellate

Court and thus, judgment and decree is fallacious and suffers from illegality and perversity.

The judgment and decree of the Lower Appellate Court is hereby set aside. The questions of law noticed above are answered in favour of appellant-defendant no.6 and against the respondents.

Resultantly, the regular second appeal stands allowed.

(AMIT RAWAL)
JUDGE

31.01.2019
savita

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