

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

RSA No.1582 of 2001 (O&M)

Date of Order:17.01.2019

Gajraj Son of Nathu

..Appellant

Versus

Gajraj son of Budha

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Jain, Senior Advocate, with
Mr. Amit Jain, Advocate, and
Mr. Abhishek Dhull, Advocate
for the appellant.

Mr. Adarsh Jain, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Although, property in dispute is small, however, issue which needs determination is important.

Plaintiff-appellant is in the regular second appeal against the findings of fact arrived at by the courts below, dismissing his suit for permanent injunction that he is owner in possession of a 100 sq. yards plot in village Karnera, Tehsil Ballabgarh, District Faridabad pursuant to allotment to him by the Haryana Government as per certificate of allotment dated 05.11.1976. He has pleaded that boundary wall has been constructed and the defendant, who is also having same name but name of father differs, is trying to interfere in his possession.

Defendant contested the suit and pleaded that he was allotted plot as he belongs to backward class as per resolution No.29-30 dated 20.08.1975. It was further pleaded that the allotment is in his favour and there is a typographical error while writing father's name.

In the present case, plaintiff as well as defendant have same name, namely Gajraj. Plaintiff-appellant is Gajraj son of Nathu son of Nobat. Whereas defendant-respondent is Gajraj son of Budha.

Ex.D1 is certificate of allotment-cum-conveyance deed duly registered by the Sub-Registrar. It is in favour of plaintiff-Gajraj son of Nathu, dated 05.11.1976. Certificate of allotment is signed by Sarpanch, Banwari Lal Panch and other witnesses.

Both the courts have dismissed the suit filed by the plaintiff on two grounds: _

- (i) plaintiff has failed to produce original sale deed. He has produced a certified copy from the office of Sub-Registrar but permission to lead secondary evidence has not been obtained.
- (ii) the original sale deed has been produced by the defendant.

In the considered view of this court, the following questions which needs determination are:-

- (i) Whether the plaintiff can be deprived of the rights of the property merely because the sale deed is in possession of the defendant, which actually records that it is the plaintiff who is owner?
- (ii) Once the original sale deed has been produced and has come on record, can the court refuse to look into the aforesaid document in favour of the plaintiff merely because it has been produced by the defendant?

This court has heard learned counsel for the parties at length

and with their able assistance gone thorough the judgments passed by the courts below.

Learned senior counsel appearing for the appellant while drawing attention of the court to Ex.D1, the original sale deed, submitted that such sale deed is in favour of Gajraj Son of Nathu and not in favour of Gajraj son of Budha. He further submitted that this sale deed was executed and registered in the year 1976 but the defendant who claims that his parentage has been wrongly recorded in the revenue record has never taken any steps to get it corrected or produced any evidence that the allotment was made in fact in his favour. He further drew attention of the court to mutation entered and sanctioned in the year 1976 on the basis of sale deed wherein also Gajraj son of Nathu has been recorded as owner. He further drew attention of the court to the Khasra girdwaries and jamabandi wherein also the name of the plaintiff is recorded as owner. He has further draw attention of the court to the statement of PW5 Banwri Lal, who was the then Sarpanch of the village and had signed the sale deed who has proved that the allotment was in favour of Gajraj son of Nathu. He has further submitted that DW1-defendant when appeared in evidence has admitted that he is owner of another house which is ancestral in nature. He further submitted that as per the allotment letter, the allotment was in favour of landless workers and Gajraj son of Budha admitted that he is owner of another house in village which has come to him from his ancestors. He further drew attention of the court to the statement of Krishan Lal, who has appeared as DW2, wherein Krishan Lal has stated that some resolution was passed by the Gram Panchayat for allotment of the land to the persons belonging to the backward class but no resolution has been produced.

On the other hand, learned counsel for the respondent has drawn attention of the court to paragraph 2 of the written statement wherein it has been pleaded that the allotment had been made to the persons belong to the backward class vide resolution no.29-30 dated 20.08.1975. He further submitted that the defendant has pleaded that the registered sale deed bears his thumb impressions. He further referred to the statement of PW1 wherein he admits that he was residing in village Assawati, however, in the next sentence itself he has stated that he is residing in village Karnera since 1972-1973. He has also referred to the statement of the Banwari wherein he admits that there was some resolution passed for allotment of the land to the backward class also. He has further referred to the certificate Ex.D7 signed by Sarpanch, Deputy Sarpanch and 3 panches. On careful reading of the aforesaid certificate, the panchayat has stated that the defendant belongs to a backward class and in the year 1976, residential plots were allotted and defendant used to pay chulha tax, whereas Gajraj son of Budha has not been paying chulha tax from 1975-76 to 78 and he belongs to Tyagi community.

This court has analyzed the arguments of learned counsel for the parties and examined the evidence.

Ex.D1 is an original sale deed executed in favour of plaintiff-appellant. This document was executed and registered in the year 1976. Litigation started in the year 1994. Trial court decided the suit in 1999. Defendant did not ever move an application either before the Gram Panchayat or before the Registration Authority for correcting the name of his father. Still further no witness has been produced from the Gram Panchayat which may prove that the actual allotment was for Gajraj son of

Budha and not Gajraj son of Nathu.

Still further, although, defendant has pleaded that thumb impressions on the registered sale deed belongs to him but no evidence to prove that fact has been produced. The court is faced with a situation where there is a registered document which is an instrument of title in favour of the plaintiff-appellant. The instrument is followed by series of documents which prove that the entry of the aforesaid deed was recorded in the revenue record and the revenue record also proves that the plaintiff-appellant is owner of the property.

Let's examine the document which has been produced by the defendant i.e. Ex.D7. In the certificate, which has been issued by the panchayat, it is nowhere recorded that this allotment was never made to Gajraj son of Nathu but it was meant for Gajraj son of Budha. No doubt an effort has been made to project that Gajraj son of Budha son of Nathu and therefore there an error, however, no evidence in support thereof has been produced. Learned counsel for the respondent tried to take benefit of the statement of Gajraj wherein he admits that name of grand father of defendant is Nathu. However, if one reads the statement carefully, it records that he does not know whether the name of grand father of defendant is Nathu or not. Defendant has not produced any evidence to prove that the name of his grand father is Nathu.

In the present case, allotment letter which is a registered sale deed has been proved by examining the member of the panchayat i.e. Banwari Lal, who has appeared for the plaintiff and supported his case. Defendant has failed to examine any member of the Gram Panchayat who may prove that there was a resolution for allotment of a land in favour of

backward class and in fact this allotment was meant for persons belonging to backward class. Rather first sentence of Ex.D1-the registered sale deed, it is recorded that this allotment letter is in favour of landless persons. Defendant admits that he is not a landless person but he is owner of the house as admitted by him although ancestral.

Now let us examine the 2 reasons assigned by the courts to dismiss the suit filed by the plaintiff. First reasons is obviously erroneous because the original sale deed has come on record as Ex.D1 which is in favour of the plaintiff. Once the original document has come on record irrespective of the fact that which party produced the same, the court could not record a finding that since only certified copy has been produced, but no permission for secondary evidence has been obtained, therefore, the document cannot be read in evidence.

Similarly, the second reasons recorded by the courts below that since original sale deed has been produced by the defendant, therefore, defendant is owner, is also perverse. The persons who produced the document cannot be declared owner. The declaration can only be granted in favour of persons in whose favour the title document is. The document as noticed is in favour of the plaintiff i.e. Gajraj son of Nathu.

In view of the reasons recorded in favour of the appellant, the judgments and decrees passed by both the courts below are set aside. The suit filed by the plaintiff shall stands decreed with costs throughout.

Regular second appeal is allowed.

January 17, 2019
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No