IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 09.12.2019

RSA No.3340 of 2019 (O&M)

Kuldeep Sharma ... Appellant

Versus

Savita Sharma ... Respondent

CR No.7051 of 2019 (O&M)

Kuldeep Sharma ... Petitioner

Versus

Savita Sharma ... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashok Sharma Nabhewala, Advocate
for the appellant/petitioner.

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REKHA MITTAL, J.

This order will dispose of RSA No.3340 of 2019 and CR No.7051 of 2019 as decision of RSA would have material bearing on decision of Civil Revision.

RSA No.3340 of 2019

The appellant and respondent are close relatives as respondent is the wife of brother in law (wife's brother) of appellant Kuldeep Sharma. The property in dispute is House No.A-40, IInd Floor, Faridabad (comprising two bed rooms, one drawing cum dining, one toilet and one kitchen having an area measuring 381 sq. yards situated at Ashoka Enclave Extension No.II, Faridabad. The appellant/plaintiff filed the suit seeking declaration that he is absolute owner and in possession of the aforesaid property; impugned sale deed bearing document No.3609 dated 31.07.2002 regarding suit property is wrong, illegal, null, void, false, sham and bogus document and the same is not binding upon him. A decree of permanent injunction restraining the respondent/defendant from interfering in his peaceful possession of the suit property was also prayed for.

The facts, in brief, are that plaintiff entered into agreement to purchase the suit house with Arun Gupta son of TC Gupta resident of Faridabad, general power of attorney holder of Smt. Shashi Prabha Mazumdar vide agreement dated 25.04.2002 for sale consideration of Rs.5 lakhs. He paid Rs.1.5 lakh as advance money through cheque No.102181 dated 25.06.2002 drawn on Global Trust Bank, New Delhi. The balance payment of Rs.3.5 lakhs was to be made on or before 05.07.2002. Later, with mutual consent of the parties, date for execution and registration of sale deed was extended upto 31.07.2002 and seller received another amount of Rs.1 lakh from the appellant without issuing any receipt and remaining amount of Rs.2.5 lakhs was to be paid at the time of execution of sale deed. The plaintiff also paid a sum of Rs.70,000/- on account of stamp value etc. to husband of the defendant. The respondent/defendant with intention to grab money of the plaintiff, in collusion with registering authority, played fraud with the plaintiff. The husband of defendant instead of getting the sale deed executed in the name of plaintiff, got executed/registered sale deed dated 31.07.2002 in the name of defendant. The possession of suit property is still with the plaintiff since the date of its purchase, without any interference. Hence the suit.

The respondent/defendant filed the written statement raising preliminary objections regarding maintainability, cause of action, concealment of material facts, non-joinder and mis-joinder of parties and the appellant having approached the Court with un-cleaned hands. She denied all material averments on the basis whereof the appellant sought declaration with regard to his ownership by declaring the sale deed dated 31.07.2002 to be null and void and not binding against him. It is averred that plaintiff is in illegal possession of the property as he was initially inducted as tenant in the year 2002 when defendant became owner of the property vide sale deed dated 31.07.2002. The plaintiff has not paid the rent @ Rs.3500/- per month for the past three years. The sale deed was executed in favour of answering defendant by Arun Gupta for sale consideration of Rs.4 lakhs, duly registered in the office of Joint Sub Registrar, Faridabad. The defendant paid the amount to the plaintiff for purchasing property in Faridabad in the name of defendant but he committed an act of fraud and cheating and got executed the receipt of advance amount and agreement in his favour without information and knowledge of the defendant. The defendant made payment to Arun Gupta through bank drafts dated 27.02.2002 which were prepared from the account of husband of the defendant Sh. RK Sharma, proprietor of M/s Gayatri Metal. Drafts bearing No.091077, 091076 and 674097 totaling Rs.2.5 lakhs were got prepared from funds of the defendant. The advance amount of Rs.1.5 lakhs was also paid by the defendant in the month of June, 2002 through the plaintiff. The amount was given in cash without taking any receipt due to close relationship with the plaintiff. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

The trial Court framed following issues for determination:-

1. Whether the plaintiff is owner in possession of the house in question?OPP
2. Whether any agreement to purcahse the house in question was entered into by the plaintiff on 25.07.2002?OPP
3. Whether the sale deed dated 31.07.2002 is illegal, null & void and not binding on the plaintiff?OPP
4. Whether the plaintiff is guilty of concealment of material facts?OPD
5. Whether the suit is bad for non-joinder and mis-joinder of parties?OPD
6. Whether the plaintiff has no locus standi to file the present suit?OPD
7. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. The appellant/plaintiff led evidence, referred to in paras 5 and 6 of the judgment of trial Court. The respondent/defendant adduced evidence, noticed in paras 7 and 8 of the judgment of said Court.

Having heard counsel for the parties in the light of materials on record, the trial Court answered issues No.1 to 3 taken up jointly against the plaintiff and in favour of the respondent on the basis whereof suit of the plaintiff was dismissed.

Appeal preferred by unsuccessful plaintiff/appellant did not find favour with the Additional District Judge, Faridabad as the said Court affirmed findings of the trial Court on material aspects.

Counsel for the appellant would argue that agreement to sell of the disputed property was executed by Arun Gupta son of Sh. TC Gupta in favour of the appellant/plaintiff, copy whereof is Ex.P3. It is argued that in the agreement, there is reference to payment of Rs.1.5 lakhs as an advance vide cheque No.102181 dated 25.06.2002 drawn on Global Trust Bank, New Delhi. It is further argued that it has been proved on record that the said amount was paid by the appellant from his account. Counsel would further argue that the appellant examined Mohd. Israil Khan, an official of Treasury Office, Faridabad and the witness produced document Ex.PW2/A pertaining to entry No.4011 whereby stamp papers worth Rs.70,000/- were purchased in the name of plaintiff/appellant. It is vehemently argued that Sh. RK Sharma, husband of the defendant by taking undue advantage and with a deceitful intention got the sale deed of suit property executed in favour of his wife Smt. Savita Sharma, therefore, the Courts have committed a grave error rather illegality by rejecting plea of the appellant that sale deed is liable to be set aside and appellant is entitle to be declared as owner in possession of the suit property. It is further argued that admittedly, the appellant is in possession of the suit house and plea of the respondent that he was inducted as tenant in the suit property is totally unfounded and hollow. It is further argued that the Courts without appreciating the averments in the plaint and testimony of the appellant/plaintiff with regard to the date on which he attained knowledge of the disputed sale deed have wrongly held that suit filed by the plaintiff/appellant is barred by limitation. It is argued that since the sale deed in favour of the defendant is based upon fraud, otherwise also, there is no period of limitation that can stand in the way of aggrieved party to seek setting aside of such a document.

I have heard counsel for the appellant, perused the paper book and records.

The first relief claimed by the appellant is that he may be declared as owner and in possession of suit property as defendant or any other person has got no right, title or concern with the same. The owner of the suit property who executed the sale deed in favour of Smt. Savita Sharma is not a party to the present litigation. He (previous owner) has not challenged the legality and validity of the sale deed in question. The appellant never became owner of the suit house on the basis of title. His claim, at best, is based upon agreement to sell dated 25.06.2002. As per the settled position in law, agreement of sale does not convey any title in immovable property. On the basis of agreement of sale, the proposed vendee can take recourse to appropriate proceedings seeking specific performance thereof against the vendor. There is nothing on record suggestive of the fact that the appellant ever filed any suit against Sh. Arun Gupta seeking specific performance of the agreement executed way back in the year 2002. Counsel for the appellant has failed to advance any meaningful arguments as to how on the basis of alleged agreement to sell and without impleading the previous owner as a party, he can be declared owner in possession of the suit property. In this view of the matter, the first contention raised by the appellant that he be declared as owner in possession of the suit property is patently misconceived and has rightly been rejected by the Courts.

The appellant has raised lot of hue and cry to say that sale deed is liable to be set aside being null and void or result of fraud played by Sh. RK Sharma, husband of the defendant and brother in law (sala of the plaintiff). In para 5 of the plaint, it has been averred that Sh. RK Sharma and defendant are very clever persons who with intention to grab money of the plaintiff in collusion with registering authority played a fraud with the plaintiff and got the sale deed executed in the name of defendant in place of in the name of plaintiff. He has not pleaded any fraud against the vendor Sh. Arun Gupta who has actually executed the sale deed in favour of the defendant on receipt of balance sale consideration of Rs.2.5 lakhs paid by way of three demand drafts prepared from the bank account maintained by Sh. RK Sharma. There is no allegation that Sh. RK Sharma made any misrepresentation to the vendor nor Sh. Arun Gupta has ever expressed any grievance against the sale deed dated 31.07.2002. If Sh. Arun Gupta despite knowing fully well that agreement to sell has been executed in favour of the plaintiff/appellant but still proceeded to execute the sale deed in favour of the defendant, neither the defendant nor her husband can be blamed for the same. Assuming that the respondent/defendant has not paid the amount of Rs.1.5 lakhs to the appellant/plaintiff who had paid that amount through a cheque issued from his bank account and the same has been adjusted towards total sale consideration paid to Sh. Arun Gupta vide sale deed dated 31.07.2002, the appellant, at best could seek recovery of that amount from the defendant but for that reason, he cannot be heard to say that sale deed is the result of fraud played by the defendant and her husband. The Courts below have rightly held that the appellant has failed to plead ingredients of fraud or prove the same, required to be proved akin to a criminal charge, therefore, his plea for getting the sale deed set aside on this score has rightly been rejected.

The appellant filed the suit for declaration in July, 2007 to set aside sale deed dated 31.07.2002. As per allegation raised in the plaint, the sale deed was agreed to be executed on 05.07.2002 but the date was extended to 31.07.2002 with mutual consent of seller and purchaser when he paid another sum of Rs.1 lakh to Sh. Arun Gupta without obtaining any receipt. Firstly, plea of the appellant that he paid another sum of Rs.1 lakh to Sh. Arun Gupta before 31.07.2002 without a writing appears to be a patent lie. It is difficult to accept that a person would pay Rs.1 lakh to the proposed vendor without asking for a receipt or endorsement on the agreement. The original agreement has not seen light of the day and a copy thereof was produced after seeking permission of the Court. Sh. Arun Gupta was not examined in the case to prove payment of Rs.1 lakh. These facts go a long way to prove that appellant had not approached the Court with clean hands.

The appellant is resident of Faridabad as per his address given in the plaint. It appears that earlier he was a resident of Delhi. The defendant and her husband are residents of Loha Mandi, Agra. The appellant did not clearly state, if on the date of sale deed, he was or was not present in the office of Sub Registrar, Faridabad. It is not plea of the appellant that balance sale consideration of Rs.2.5 lakhs (though it should be Rs.3.5 lakhs as per agreement) was paid by him to Sh. RK Sharma or to the defendant either on 31.07.2002 or prior thereto. In para 3 of the plaint, he has raised the plea that remaining amount of Rs.2.5 lakh was paid by the plaintiff to the seller at the time of execution of sale deed, executed on 31.07.2002. No evidence has been adduced by the appellant to prove payment of Rs.2.5 lakhs to the seller on 31.07.2002. On the contrary, payment of balance amount of Rs.2.5 lakhs was made to the seller by way of three demand drafts, reference whereof has been made in the sale deed, prepared from the account of Sh. RK Sharma. Since the appellant has failed to prove payment of balance sale consideration, where was the occasion for

Arun Gupta to execute the sale deed in his favour.

Analysed from another angle, if the appellant had paid Rs.2.5 lakhs to the seller on 31.07.2002, it means that he was present at the time of registration of the sale deed. It is next to impossible that had the deal for sale proceeded in the manner sought to be propounded by the appellant, he would have permitted execution of sale deed in favour of Smt. Savita Sharma despite the entire amount of Rs.5 lakhs having been paid by him to vendor Sh. Arun Gupta. The plea of appellant either with regard to payment of Rs.1 lakh prior to 31.07.2002 or Rs.2.5 lakhs on 31.07.2002 to the vendor is nothing but based on falsehood. This apart, if plea of the appellant is accepted that he was under the impression on 31.07.2002 that sale deed had been executed in his favour, he should have insisted for delivery of possession to him by Arun Gupta latest by 31.07.2002 but he came in possession on 07.08.2002, deposed by Kuldeep (appellant herein) in the opening line of his cross examination. In view of the above, it can safely be held that the appellant filed the suit on the basis of agreement to sell dated 25.06.2002 knowing fully well that he has not availed appropriate remedy against Sh. Arun Gupta within the stipulated period of limitation, just to perpetuate his possession of the suit property.

As has been discussed hereinbefore, plea of the appellant is that he paid Rs.2.5 lakhs to the vendor at the time of execution of sale deed on 31.07.2002. As per the settled position, man may tell lie but the circumstances do not. Firstly, if the appellant was present at the time of execution of sale deed, there was no reason for him not to insist for getting a copy of the same after registration by the concerned authority. It is difficult to accept to reason that if a person has incurred the entire expenses for purchasing a property, he would not ask for copy or original sale deed for a period of about five years. Keeping in view discussion made hereinbefore, conduct of the appellant is not free from blemish. The averments raised in the plaint or testimony of the appellant that he did not come to know about the sale deed prepared in the name of defendant till June, 2007 can neither be taken on face value nor sufficient to interfere in consistent findings of the Courts on the question of limitation. On the contrary, once plea of the appellant that sale deed is the result of fraud is rejected, suit filed by the appellant is liable to be dismissed on the question of limitation itself. Examined from any angle, case of the appellant is nothing but misuse and abuse of process of law.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs. As the appeal has been decided on merits, application for condonation of delay is of academic relevance.

CR No.7051 of 2019

Challenge in the present revision has been directed against concurrent findings recorded by the Courts whereby the petitioner has been ordered to be evicted from the premises, detailed hereinbefore while deciding RSA No.3340 of 2019.

The petitioner has been evicted on the ground of non-payment of rent. The Rent Controller directed the petitioner to hand-over vacant possession immediately, vide order dated 13.04.2018. The appeal preferred by the petitioner was dismissed by the Appellate Authority, Faridabad vide order dated 10.10.2019.

Perusal of judgments passed by the Courts makes it evident that petitioner denied relationship of landlord and tenant between the parties primarily on the ground that sale deed executed in favour of respondent qua the suit property is the result of fraud played upon him by the respondent and her husband Sh. RK Sharma. Since the petitioner denied relationship of landlord and tenant, the Rent Controller did not assess rent provisionally.

The Court framed preliminary issue, reads thus:-

> Whether there is relationship of landlord-tenant between the parties?OPP.

The said issue was answered against the petitioner and he was ordered to be evicted on account of non-payment of arrears of rent @ Rs.3500/- per month w.e.f 10.11.2004 onwards.

Counsel for the petitioner made submissions to assail findings of the Civil Court in view of challenge to those findings in regular second appeal. However, he did not make any additional submissions to assail the eviction order passed by the Rent Controller and affirmed by the appellate authority.

Before dealing with the instant case, it is pertinent to note that scope of interference in exercise of revisional jurisdiction of this Court is quite limited. In other words, no interference is warranted unless consistent findings suffer from perversity. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Hindustan Petroleum Corporation Limited vs. Dilbahar Singh (2014) 9 SCC 78.**

A relevant extract from paras 32, 33, 43 and 44 is quoted for ready reference:-

> "32. Insofar as the three-Judge Bench decision of this Court in Ram Dass is concerned, it rightly observes that revisional power is subject to well-known limitations inherent in all revisional jurisdictions and the matter essentially turns on the language of the statute investing the jurisdiction. We do not think that there can ever be objection to the above statement. The controversy centers round the following observation in Ram Dass, "...that jurisdiction enables the Court of revision, in appropriate cases, to examine the correctness of the findings of facts also...".It is suggested that by observing so, the three Judge Bench in Ram Dass has enabled the High Court to interfere with the findings of fact by re-appreciating the evidence. We do not think that the three-Judge Bench has gone to that extent in Ram Dass. The observation in Ram Dass that as the expression used conferring revisional jurisdiction is "legality and propriety", the High Court has wider jurisdiction obviously means that the power of revision vested in the High Court in the statute is wider than the power conferred on it under Section 115 of the Code of Civil Procedure; it is not confined to the jurisdictional error alone. However, in dealing with the findings of fact, the

examination of findings of fact by the High Court is limited to satisfy itself that the decision is "according to law".This is expressly stated in Ram Dass. Whether or not a finding of fact recorded by the subordinate court/tribunal is according to law, is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice. Ram Dass does not lay down as a proposition of law that the revisional power of the High Court under the Rent Control Act is as wide as that of the Appellate Court or the Appellate Authority or such power is co-extensive with that of the Appellate Authority or that the concluded finding of fact recorded by the original Authority or the Appellate Authority can be interfered with by the High Court by re-appreciating evidence because revisional court/authority is not in agreement with the finding of fact recorded by the Court/Authority below. Ram Dass does not exposit that the revisional power conferred upon the High Court is as wide as an appellate power to reappraise or re- assess the evidence for coming to a different finding contrary to the finding recorded by the Court/Authority below. Rather, it emphasises that while examining the correctness of findings of fact, the revisional Court is not the second Court of first appeal. Ram Dass does not cross the limits of revisional court as explained in Dattonpant.

33. Rai Chand Jain that follows Ram Dass also does not lay down that the High Court in exercise of its power under the Rent Control Act may reverse the findings of fact merely because on re-appreciation of the evidence it has a different view on the findings of fact. The observations made by this

Court in Rai Chand Jain must also be read in the context we have explained Ram Dass.

43.We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re- appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law.A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether

> the order impugned before it suffers from procedural illegality or irregularity.
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> 44. We, thus, approve the view of this Court in Rukmini as noted by us. The decision of this Court in Ram Dass must be read as explained above. The reference is answered accordingly."

Challenge to the sale deed dated 31.07.2002 executed by the previous owner in favour of the respondent has been rejected while disposing of the regular second appeal, in view of findings recorded therein. That being so, the petitioner cannot derive any advantage to his contention from averments that he is owner in possession of suit property or sale deed dated 31.07.2002 executed in favour of the respondent is the result of fraud.

Perusal of the grounds of revision makes it evident that in addition to claim qua ownership of the suit property, the petitioner has denied himself to be a tenant in the suit property by raising averments that neither the tenancy is evidenced by a written contract nor a document with regard to payment of rent by the petitioner to respondent till 09.11.2004 is produced. Indisputably, the parties are closely related. There is nothing un-natural, if tenancy was created without preparing a rent deed or lease agreement. This Court cannot overlook that in large number of cases where the landlord and tenant are stranger to each other, tenancy is created without any writing or to say that it is created by oral agreement. Similarly, payment of rent is not evidenced by a receipt/document. That being so, contention of the petitioner to challenge concurrent findings qua relationship of landlord and tenant cannot be interfered with on the aforesaid grounds. Furthermore, the petitioner has not claimed his possession in any capacity other than owner of the property, rejected for detailed reasons assigned while disposing of the aforesaid regular second appeal.

In view of what has been discussed hereinbefore, finding no merit, the revision fails and is accordingly dismissed in limine.

09.12.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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