

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1281 of 2013 (O&M)
Date of decision : 29.7.2019

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Mahabir Parsad

.....Appellant

vs.

Lalit Kumar and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Argued by : Mr. K.B. Sharma, Advocate for the appellant.

Mr. A.K. Gupta, Advocate for the respondents.

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H. S. Madaan, J.

Briefly stated, facts of the case are that plaintiff Mahabir Parsad had brought a suit against defendants – Lalit Kumar and Yudhister Kumar – both real brothers, seeking grant of permanent injunction, restraining defendants from interfering in his peaceful possession over the suit property and dispossessing him therefrom.

As per version of the plaintiff, he is owner in possession of the house, which is part and parcel of plot No. 88 B having total area

of 300 sq. yards, constructed over an area of 120 sq. yards. The land is comprised in Khewat No. 650/1089, Rect. No. 20 Killa No. 5(8-0), 6(7-9), situated in the revenue estate of village Gaunchi. The plaintiff has been paying house tax qua the said property and in Municipal record it appears at No. 1354 and in ration card its number is 982. The plaintiff had purchased the plot measuring 120 sq. yards from defendants, as defendant No.2 is General Power of Attorney of original owner namely, Raj Kumar s/o Bishamber Dass, resident of Faridabad. Defendant No.1 entered into an agreement on 25.3.1996, as defendant No.2 was only a symbolic owner. The total consideration amount was paid by the plaintiff to the defendants and only formal sale deed was to be executed. Defendant No.1 had admitted this fact in compromise dated 27.12.2005, which was arrived at in premises of CIA Staff-III, Faridabad. Formal sale deed could not be got executed due to the ban imposed by the Government. Of the late, respondents were bent upon to interfere in the peaceful possession of the plaintiff over the suit property, which had given rise to a cause of action to the plaintiff to file the present suit.

On notice, the defendants appeared and filed written statement contesting the suit, raising preliminary objections, to wit that the suit was not maintainable; that no cause of action had accrued to the plaintiff to file the suit; that plaintiff had no locus standi to file the suit; that the suit was bad for mis-joinder and non-joinder of necessary parties; that according to the defendants original

owner of the suit property was Raj Kumar Sharma s/o Bishamber Dass Sharma, a resident of Faridabad, who had not been impleaded as a defendant and defendant No.2 was neither necessary nor proper party, since he had neither executed any agreement nor handed over the possession of the suit property to the plaintiff; that the plaintiff had filed the suit with a view to safeguard himself from the law since as on 9.12.2001 he was found to be in arrears of Rs.43,950/- with regard to the loan amount obtained by him from M/s Pick 'N' Move Finance Private Ltd., Faridabad. On being asked to clear the arrears, he had submitted an application to the police authorities, taking false pleas. That application was entrusted to CIA-II Staff. Defendant No.1 was summoned there. He was mal treated and misbehaved by the police authorities and forced to get the matter settled under threat and coercion. Defendant No.1 was compelled to put his signatures on a writing shown as 'Bahmi Faisla' dated 27.12.2006. However, that agreement is illegal. That document was a result of fraud, cheating, coercion, pressure and ineffective qua rights of defendant No.1. As a matter of fact, defendants had not delivered possession of plot No. 88-B to the plaintiff. Hence question of possession of house over said plot did not arise. The boundaries of the house given are also wrong. Only foundation upto D.P.C. level had been filled up in the plot and no construction in the form of room, latrine, bathroom etc. was there. Remaining assertions in the plaint were controverted, with a prayer for dismissal of the suit.

From the pleadings of the parties, following issues were

framed :-

1. Whether the plaintiff is entitled to decree of permanent injunction as prayed for ? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether plaintiff has no locus standi and cause of action to file the present suit ? OPD
4. Whether the suit of the plaintiff is barred by limitation? OPD
5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
6. Relief.

Parties were afforded opportunities to lead their respective evidence.

In order to prove their case, the plaintiff had examined Nathi Ram as PW-1, HC Dharambir Singh as PW-2, Satya Parkash Mittal Draughtsman as PW-3, Sh. Radhey Shyam Advocate as PW-4, Dev Singh as PW-5, while plaintiff himself appeared in the witness box as PW-6 and further examined Ashok Kumar as PW-7, and closed his evidence after tendering certain documents.

On the other hand, the defendant No.1 examined himself as DW-1, whereas defendant No.2 appeared as DW-2 and thereafter evidence was closed by order of the Court.

In rebuttal, plaintiff tendered certain documents.

After hearing the arguments, learned trial Court took up all the issues together being inter-connected and decided the same

against the defendants and in favour of the plaintiff.

In view of the findings recorded, the trial Court vide detailed judgment and decree dated 1.3.2011, decreed the suit of the plaintiff and defendants were restrained from interfering into the peaceful possession of the plaintiff and further restrained from dispossessing him except in due course of law.

The defendants feeling aggrieved by that judgment and decree had approached the learned District Judge, Faridabad, by way of filing an appeal, which was assigned to Additional District Judge, Faridabad, who vide judgment and decree dated 18.12.2012, accepted the appeal, setting aside the judgment and decree passed by the trial Court and dismissed the suit filed by the plaintiff.

Feeling aggrieved by the said judgment and decree passed by the Additional District Judge, Faridabad, the plaintiff has knocked at the door of this Court, by way of filing the present Regular Second Appeal, notice of which was given to the defendant-respondents, who have put in appearance.

I have heard learned counsel for the parties besides going through the record.

The plaintiff had filed a simple suit for grant of permanent injunction against the defendants, claiming that he had purchased the plot from the defendants, over which he has raised construction and he is in possession of the said house. He has paid the entire consideration amount to the vendors, though formal sale deed is yet to be executed in his favour. These assertions were denied by the

defendants. As such the crucial thing to be seen in this case is as to whether the plaintiff is in legal possession of the house in suit and question of title is not to be adjudicated.

The trial Court by proper appraisal of evidence brought on file by the parties, has come to the conclusion that agreement to sell Exhibit PW 6/A proved in evidence, by the plaintiff, goes to show that it was entered into between the plaintiff and Lalit Property Dealer. The said Lalit Property Dealer and M/s Pick 'N' Move Finance Private Limited are owned jointly by defendants No.1 and 2, as admitted by defendants in their respective cross examination and General Power of Attorney in favour of defendant No.2 by Raj Kumar Sharma (Exhibit P-7), as well as sale deed (Exhibit P-8), vide which Raj Kumar Sharma had purchased the property in question, have been produced on record. The execution of the agreement to sell is further established from the 'Bhami Faisla' dated 27.12.2006. Furthermore copy of house tax receipt Exhibit PW 1/A, goes to show that the plaintiff has paid house tax till 31.3.2007. Electricity bills - Exhibits P-9 and P-10 for the period 5.3.2009 and 26.5.2008, also goes to prove possession of plaintiff over the suit property. From receipts Exhibits PW 6/B to PW 6/H, it comes out that the entire sale consideration amount has been paid by the plaintiff to defendant-vendor. As such in terms of Section 53-A of the Transfer of the Property Act, the possession of plaintiff was protected. DW-2 Yudhister Kumar, had admitted in his cross examination that the house in question was constructed by Mahabir Parsad- plaintiff.

Under the circumstances, the plaintiff comes out to be in legal possession of the suit property and his possession cannot be termed to be illegal or unauthorized. The Ist Appellate Court has non-suited the plaintiff simply for the reason that plaintiff has not taken any measures for getting the sale deed executed in his favour. May it be so, the plaintiff having paid the entire consideration amount and he having been put in possession of the plot purchased by him, having raised construction over it and being in its possession, ends of justice and equity demand that his possession should be protected. The trial Court has granted him permanent injunction restraining the defendants from interfering in his possession or dispossessing him except in due course of law. If the defendants have got any grouse or are aggrieved in any manner, due to non-execution of the sale deed, they are free to avail of their legal remedy.

Even if they want to get possession of the house in question, they can proceed against the plaintiff in accordance with law, but use of force and illegal means could certainly be not allowed. The trial Court has precisely granted this relief to the plaintiff. The Ist Appellate Court mis-directed itself and came to a wrong conclusion that no case for grant of permanent injunction is made out. The Ist Appellate Court wrongly up set the legal and valid judgment and decree passed by the trial Court. That wrong is being undone by acceptance of the Regular Second Appeal.

Resultantly, the appeal is allowed and the impugned judgment and decree passed by the Additional District Judge,

Faridabad, are set aside and judgment and decree passed by the trial Court are restored, by way of acceptance of the present appeal.

29.7.2019		(H.S. Madaan)
chugh		Judge
	Whether speaking / reasoned	Yes / No
	Whether reportable	Yes / No