

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

RSA-2065-2014 (O&M)

Date of decision : 16.10.2019

Daljit Singh and another

...Appellants

Versus

Shakuntla Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Rahul Sharma-I, Advocate for the appellants.

Mr. S.K. Arya, Advocate for the respondents.

ANIL KSHETARPAL, J.

Importance of Presiding Judges of the Courts inspecting the site can never be undermined for effective and substantial justice between the parties. The Presiding Judges should not be afraid to come out of their Court rooms having four walls and carry out local inspection in order to adjudicate the case pending before them properly. The developments in this case clearly depict and reinforce the requirement of local inspection by the Presiding Officers.

Both the parties have filed written arguments. This Court has gone through the aforesaid written arguments. Oral arguments have also been heard.

Plaintiffs are in the Regular Second Appeal against the

concurrent findings of fact arrived at by both the Courts below.

Question which requires consideration is “whether a registered document i.e. sale deed which is part of office of Registrar appointed under the Registration Act 1908, produced and proved by the official after bringing the original record from the office of the Registrar can be ignored by the Court on the ground that original thereof has not been produced particularly when executant does not dispute execution thereof and correctness/validity of sale deed is not being questioned?”

Some facts are required to be noticed.

Plaintiffs filed a suit for possession by way of ejectment claiming to be owner of the room in question. It was claimed that the aforesaid room is part of house No.57/1. Arrears of damages amounting to ₹3600/- were also sought to be recovered. Late Sh. Sant Singh was owner of the property pursuant to an allotment by the Rehabilitation Department. After the death of Sant Singh, property was inherited by Satnam Singh etc. and the plaintiffs purchased the aforesaid property from Satnam Singh etc. heirs of late Sh. Sant Singh through registered sale deed dated 05.03.1992. Room in question is part of the property purchased by them and the defendants are in unauthorized possession of the property. There is construction on the first floor of the disputed room which is in possession of the plaintiffs. Originally the aforesaid room on the first floor was in possession of one Tarsem who had handed over possession to the plaintiffs.

Defendants contested the suit and claimed that the room in

question is in their possession since 1947. The room in question is not part of the property purchased by the plaintiffs.

After framing of the issues and permitting the parties to lead evidence, the trial Court dismissed the suit, affirmed by the learned District Judge, Ambala in appeal.

After hearing arguments at length, the judgment was reserved on 26.03.2019. On careful scrutiny of the file, when it was found that since the dispute is whether the room in question is part of the property purchased by the plaintiffs/appellants or not, it was considered appropriate to direct the Presiding Judge of the trial Court to carry out local/physical inspection of the site particularly in view of the argument of learned counsel for the appellants that construction on the first floor over the disputed room has accessibility through the portion in possession of the plaintiffs and not from the premises in occupation of the defendants. Pursuant to the aforesaid order dated 02.04.2019, a report has been received and the Presiding Judge after spot inspection while getting the entire area demarcated in his own presence, has reported that the property in dispute (room in question) is part of the property purchased by the plaintiffs vide sale deed dated 05.03.1992.

It has been noticed that the learned Civil Judge while dismissing the suit vide judgment dated 09.11.2011 held that as per sale deed Ex.PW4/A dated 05.03.1992, a lay out plan was attached thereto, however, the original lay out plan has not been produced and document Ex.PW5/G, a lay out plan is not proved to be the lay out plan attached

with the sale deed and, therefore, plaintiffs have failed to prove their case. The aforesaid finding was affirmed by the learned District Judge. At this stage, it is required to be noticed that record from the office of the Registrar under the Registration Act was summoned. PW4-Rajesh Kalyan appeared alongwith the original record and produced attested copy of the sale deed Ex.PW4/A dated 05.03.1992 executed in favour of the plaintiffs. Original record was seen and returned. Thereafter, one of the plaintiffs appeared in evidence and produced Ex.PW5/G, lay out plan which was alleged to be part of the sale deed. The aforesaid document was exhibited on record and the original was seen and returned. Thereafter, the plaintiffs again examined Rajesh Kalyan, Registration Clerk as PW6 who again brought the original record from the office of Sub-Registrar and produced copy of the lay out plan Ex.PW6/A. It must be noticed that when Ex.PW5/G was produced by the plaintiffs, counsel for the defendants did not object to exhibiting of the aforesaid document. Similarly, when Ex.PW6/A was produced, counsel for the defendants never objected to its being exhibited and proved through Rajesh Kalyan, Registration Clerk in the office of Registrar.

Now the question is “whether the Courts were correct in recording a finding that since original lay out plan has not been produced, therefore, it is not proved on file?”.

In the considered view of this Court, answer to the aforesaid question has to be in negative. The Court must pose itself two questions before proceeding to decide case of such nature. First question would be

“whether the registered document produced is primary evidence or secondary evidence? And second question which can be required to be answered by the Court is that “whether the correctness and validity of the sale deed or registered document is in question or not?”

Now reverting back to first question. Primary evidence has been defined in Section 62 of the Evidence Act, which is extracted as under:-

“62. Primary evidence.—Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document;

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.”

Section 62 of the Evidence Act explicitly provide that where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

It is clear from reading of Section 62 that each counterpart of the document or each copy of the document when more than one copy of

the document have been prepared, is to be treated as primary evidence. Once, the Court finds that one copy/counterpart of a registered document is part of official record of the office of Sub-Registrar appointed under the Registration Act, 1908, then such copy once brought in the Court for its perusal is to be regarded as primary evidence even if its photocopy or attested copy thereof has been retained only on the file. Thus, in the present case, once the record from the office of Sub-Registrar appointed under the Registration Act had been brought and produced for perusal of the Court, the primary evidence had been produced.

Second question which the Court must address itself is whether correctness and validity of the sale deed or registered document is in fact in dispute or not?

In the present case, the sale deed has been executed by heirs of late Sh. Sant Singh through registered sale deed dated 05.03.1992. The dispute is with the neighbour and precise case of the plaintiff is that defendants have encroached upon some part of the property purchased by them. Once, the question of correctness and validity of the sale deed was not in dispute, the Courts ought to have proceeded with the case to determine the question which is required to be answered by the Courts.

Once, the original document brought in the Court and attested copy thereof has been exhibited and original is seen and returned, then the Court cannot later on hold that the original has not been produced. Still further, record of the office of the Registrar was again summoned and lay out plan was also proved on file. The office of the Registrar was

having not only the registered sale deed but also was having a copy of the lay out plan attached thereto. Hence, the reasons for dismissal of the suit by the Courts below were erroneous.

Still further, now facts are clear as crystal. Plaintiffs through sale deed Ex.PW4/A dated 05.03.1992 purchased the property with dimensions, details of the properties located on all the four directions as also by making reference to the municipal numbers. It is specifically mentioned in the sale deed that the area measuring 569 square yards with old construction thereon has been sold. Learned Presiding Judge of the trial Court has now got the land demarcated and found that the room in question is also part of the property purchased by the plaintiffs.

Further, it has been reported by the learned trial Court that the room on the first floor is not having any access from the portion in possession of the defendants and the only access to the room on the first floor is through the portion which is in possession of the plaintiffs.

It has also come in evidence that predecessor of the defendants filed a civil suit against the plaintiffs. On notice issued, reply was filed by the plaintiffs/appellants herein. Thereafter, predecessor of the defendants did not appear and suit was dismissed under Order 9 Rule 8 CPC vide Ex.PX. Further, room on the first floor was in possession of Tarsem Sharma. One of the defendant Shakuntla Devi filed a suit for permanent injunction claiming that Tarsem Sharma should be restrained from handing over the possession of the room on the first floor to the plaintiffs. The aforesaid suit was dismissed as the defendant herein

Shakuntla Devi failed to establish her title over the property vide judgment Ex.PX-2.

It may be noted here that the plaintiffs have not only produced copy of the sale deed executed in their favour Ex.PW4/A but have also produced copy of the deed of conveyance executed in favour of predecessor-in-interest of their vendor Ex.PW5/H.

Keeping in view the aforesaid facts, the judgments passed by the both Courts below cannot be sustained. Hence, the judgments are set aside. Question posed in the beginning is answered in favour of the appellants.

Accordingly, the Regular Second Appeal is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

16.10.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No