

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

RSA No.4071 of 2014(O&M)

Date of decision: 26.8.2019

Partap Singh and anotherAppellants

VERSUS

Suresh and othersRespondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Ajay Jain, Advocate for the appellants.

Mr. Kul Bhushan Sharma, Advocate for respondents No.1 to 3.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for declaration and permanent injunction filed by the respondents/plaintiffs was partly allowed by the trial Court to the following effect:-

"As a sequel to my findings, arrived at on various issues, the suit of the plaintiffs partly succeeds and is partly decreed. A decree for declaration to the effect that plaintiffs are in possession of the suit property is passed in favour of the plaintiffs and accordingly, the defendants are restrained from creating any type of interference in the peaceful possession of the plaintiffs or to dispossess them except in due course of law. Parties are left to bear their own costs...."

The appeal preferred by unsuccessful defendants No.1 and 2 (appellants herein) did not find favour with the Additional District Judge, Rewari. However, cross objections preferred by the respondents/plaintiffs were disposed of with the findings that their possession over the suit property is protected under Section 53-A of the Transfer of Property Act, 1882 (in short 'the Act'). The judgment and decree under appeal are modified only to the extent that possession of the plaintiffs is protected under Section 53-A of the Act and the defendants are restrained from interfering in their peaceful possession over the suit property.

The facts relevant for disposal of present appeal are that respondents/plaintiffs staked their claim to the suit property on the allegations that one Mool Chand was owner of the suit property which was in possession of Chhuttan Lal, grandfather of plaintiffs No.1 and 2 and father in law of plaintiff No.3, as *gair marusi*. On 27.06.1963, Mool Chand sold the suit property in favour of Chhuttan Lal for sale consideration of Rs.400/- and since then Chhuttan Lal became owner in possession of the suit property. Later, he raised construction of residential house thereon. Electricity connection bearing 2d-485 was obtained in the name of plaintiff No.1 and water connection was also obtained. Babu Lal son of Chhuttan Lal got issued licence of rickshaw puller from Market Committee, Rewari on 25.03.1975. The plaintiffs have their ration cards and voter list at this address. The defendants allege that they have purchased the suit property from Jagdish alleged to be adopted son of said Mool Chand. In the column of cultivation, Chhuttan Lal has been shown to be *gair marusi* tenant. Defendants threatened to dispossess the plaintiffs

from the suit property qua which they have no right, title or concern. Hence the suit.

The defendants filed the written statement raising preliminary objections that plaintiffs have no right to file the suit; suit is not maintainable in the present form and is bad for non-joinder of necessary parties. On merits, they denied that Mool Chand executed agreement to sell dated 27.06.1963. The site plan produced by the plaintiffs is stated to be wrong as they have raised construction only on half portion of the suit property. The answering defendants purchased the suit property from Jagdish vide registered sale deed dated 22.12.2005. The plaintiffs are in possession of suit property as tenants. They will not dispossess the plaintiffs except in due course of law.

The plaintiffs filed replication re-asserting their stand taken in the plaint while denying the preliminary objections raised by the defendants.

The trial Court framed the following issues for determination:-

1. Whether the plaintiff is owner in possession of the suit property? OPP
2. Whether the plaintiff is entitled to get injunction as prayed for? OPD
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether the suit is not maintainable? OPD
5. Whether the present suit is bad for non pleading of the necessary parties? OPD

6. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. The respondents/plaintiffs adduced evidence detailed in para 5 of the judgment of trial Court whereas the defendants produced evidence referred to in para 6 of the judgment of said Court. Having heard counsel for the parties in the light of materials on record, the trial Court partly decreed the suit in the terms noticed hereinbefore. The appeal was disposed of by the first Appellate Court by making modification in the aforesaid terms.

Counsel for the appellants would argue that as per case set up by the respondents/plaintiffs, Chhuttan Lal, their predecessor in interest, was in possession of suit property as *gair marusi*. It is argued that merely because agreement of sale dated 27.06.1963 is purported to be executed by Sh. Mool Chand, the respondents cannot be heard to say that they came in possession of suit property in part performance of the said agreement. It is further argued that since Chhuttan Lal did not enter into possession of suit property on the basis of agreement of sale, findings of first Appellate Court that respondents are entitled to protect their possession under Section 53-A of the Act cannot be allowed to sustain. In the alternative, it is also argued that plea of protection of possession in part performance of the agreement is available as a shield and not as a sword, therefore, the respondents could not seek protection of their possession under Section 53-A of the Act by instituting the suit in the Court. Still further, it is argued that as per the site plan produced by the respondents, total area of the property comes to approximately 392 square yards but agreement of sale in favour of Chhuttan Lal is only in respect of area measuring 200 square yards,

therefore, findings of the first Appellate Court that respondents are entitle to protect their possession in respect of the entire property under Section 53-A of the Act are otherwise unsustainable. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **A. Lewis and another Vs. M.T. Ramamurthy and others, 2008 (1) RCR (Civil) 77.**

Another submission made by counsel for the appellants is that since the suit property measuring 9 marlas equal to 272 square yards has been purchased by the appellants vide registered sale deed dated 22.12.2005 executed by Jagdish, adopted son of erstwhile owner Sh. Mool Chand, the appellants being owners of land measuring 272 square yards are entitle to recover possession by taking recourse to due process of law. It is argued that findings of the Appellate Court extending protection under Section 53-A of the Act may be set aside with liberty to the appellants to recover possession of suit property, in accordance with law.

Counsel representing the respondents/plaintiffs, on the contrary, has supported judgment and decree passed by the Court in appeal with the submission that even though Chhuttan Lal was in possession of suit property prior to agreement of sale dated 27.06.1963 was executed in his favour by Sh. Mool Chand but the agreement to sell also records the factum of delivery of possession to Chhuttan Lal under agreement of sale. It is further argued that since Chhuttan Lal had already paid the entire sale consideration of Rs.400/- to Sh. Mool Chand and he has raised construction of house over the suit property in pursuance of permission granted under the agreement of sale, the Appellate Court has rightly held that plaintiffs are entitle to protect their possession under Section 53-A of the Act. While refuting contention of counsel for the appellants that

protection under Section 53-A of the Act cannot be availed as a plaintiff, he has relied upon Full Bench decision of the Bombay High Court **Sadashiv Chander Bhamgare Vs. Eknath Pandharinath Nangude, 2004 (4) RCR (Civil) 441.** Further reference has been made to judgment of Hon'ble the Supreme Court **Rambhau Namdeo Gajre Vs. Narayan Bapuji Dhotra (dead) through LRs, 2004 (4) RCR (Civil) 303** and judgment of this Court **Dilbag and others Vs. Lachhman and others, 2012 (5) RCR (Civil) 642** and **M/s R.M.S Estate Pvt. Ltd. Vs. Hari Ram, RSA No.5341 of 2014 decided on 31.08.2016.** It is further argued that judgment in **A. Lewis and another case** (supra) relied upon by counsel for the appellants was rendered in view of peculiar facts and circumstances of the case but no such ratio of law has been laid down that a person in possession of property in part performance of agreement of sale cannot protect his possession by filing a suit for injunction.

Counsel would further argue that in the agreement of sale, there is reference to 200 square yards but as the agreement makes reference to khasra number as well, it can safely be inferred that area has been incorrectly mentioned as 200 square yards in place of 272 square yards equivalent to 9 marlas owned by Sh. Mool Chand. It is argued that the respondents/plaintiffs are entitle to protect their possession to the extent of 272 square yards on the basis of agreement of sale when otherwise appellants have nothing to do with area in excess of 272 square yards shown in the site plan Ex.PW2/B.

I have heard counsel for the parties, perused the paper-book and copies of documents supplied by counsel for the appellants during

course of hearing, correctness whereof has been vouched by counsel for the respondents.

Indisputably, Sh. Mool Chand was the erstwhile owner of khasra No.36//32 measuring 9 marlas which is recorded to be in possession of Sh. Chhuttan Lal, predecessor in interest of the plaintiffs as per copies of jamabandis produced on record. The respondents/plaintiffs have proved that Sh. Mool Chand executed agreement of sale in respect of 200 square yards at sale price of Rs.400/- which was paid to the vendor. It has been recorded in the agreement of sale that possession of the sold property has been delivered to the vendee and vendee has acquired possession at the spot even though the agreement does not make reference that Chhuttan Lal was in possession of sold area as *gair marusi* tenant. In this view of the matter, I find myself unable to accept contention of the appellants that possession of 200 square yards area was not delivered to the vendee under agreement of sale.

As per the agreement, entire payment of Rs.400/- fixed as sale price was paid by the vendee to the vendor. What was left to be done is execution of sale deed by the vendor but expenses for registration etc. to be incurred by the vendee. It has also been proved on record that the vendee has raised construction of a house over the area in his possession. There is a recital in the agreement giving liberty to the vendee to raise construction over the purchased property according to his wish. Keeping in view the above, the respondents/plaintiffs can certainly take protection of agreement of sale for retaining possession of 200 square yards of area by invoking Section 53-A of the Act. The contention raised by counsel for the appellants that protection under Section 53-A of the Act is available only

to a defendant and not to a plaintiff by relying upon judgment of Hon'ble the Supreme Court in **A. Lewis and another case** (supra) is patently misconceived and liable to be rejected. I have gone through the judgment in **A. Lewis and another case** (supra) but unable to find any such proposition in law having been laid down by Hon'ble the Supreme Court that protection of Section 53-A of the Act is available to a defendant and not to a plaintiff. On the contrary, the Full Bench of Bombay High Court in **Sadashiv Chander Bhamgare's case** (supra) formulated a specific question with regard to maintainability of a suit for injunction by seeking protection under Section 53-A of the Act. In para 9, the Court has held that the purpose behind Section 53-A is thus to provide a shield of protection to the proposed transferee to remain in possession against the original owner who has agreed to sell the land to the transferee if the proposed transferee satisfies other conditions of Section 53-A. That protection is available to the transferee as a shield against the transferor and would dis-entitle the transferor from disturbing possession of the proposed transferee who is put in possession pursuant to such agreement. After referring to the judgments **Pandit Ram Chander vs. Pandit Maharaj Kunwar and others, AIR 1939 Allahabad 611, Ram Gopal Reddy vs. Addl. Custodian Evacuee Property 1966(30) S.C.R. 214, Delhi Motor Co. vs. U.A. Basrurkar AIR 1968 Supreme Court 794, S.Govindrao Mahadik vs. Devi Sahai AIR 1982 SC 989, Maneklal Mansukhbhai vs. M/s Hormusji Jamshedji Ginwalla and Sons AIR 1950 SC 1**, the Court held in concluding part of para 11 that Section 53-A of the TP Act imposes a bar on the transferor to seek possession of the immovable property from the transferee in possession. Therefore, if the

transferor, though he has been denied that right by Section 53-A of the TP Act, tries to take possession forcibly, the proposed transferee in possession would be entitled to institute a suit to enforce the bar of Section 53-A against the transferor. If the proposed transferee in possession is denied right to institute a suit so as to protect his possession, then the proposed transferee in possession would be rendered remediless. Further held that it is clear that when it is said that the proposed transferee in possession can use Section 53-A as a shield but not as a sword, it means that he can use Section 53-A either as a plaintiff or as a defendant to protect his possession but he cannot use Section 53-A either for getting title or for getting possession if he is not actually in possession. To put it in other words, when the transferee in possession comes to the court as a plaintiff seeking a decree of perpetual injunction against the transferor, he is using Section 53-A as a shield to protect his possession.

Counsel for the appellants has failed to cite any contrary law.

In view of the above, the respondents/plaintiffs are competent to file a suit for injunction to protect their possession in part performance of agreement of sale.

Counsel for the appellants has pointed out that total area in possession of the respondents, as per the site plan proved by them, is approximately 392 square yards. The respondents/plaintiffs can protect possession of area measuring 200 square yards on the basis of agreement of sale executed by Sh. Mool Chand.

Counsel for the respondents made a vain attempt to argue that area sold by Mool Chand has not been correctly mentioned in the agreement of sale and the same should be considered in respect of entire

area comprising khasra No.36//32. Indisputably, the respondents did not file any suit against Sh. Mool Chand or his successors in interest by raising a plea that agreement of sale pertains to 9 marlas of land or area proposed to be sold has been incorrectly mentioned as 200 square yards. They have also not raised any such plea in the present suit in which successors in interest of Mool Chand have not been impleaded as a party. In the given scenario, contention raised by counsel for the respondents/plaintiffs in this regard is not tenable being beyond pleadings and unfounded.

The appellants have claimed their right in respect of area measuring 272 square yards on the basis of sale deed executed by Jagdish, adopted son of Mool Chand. The Court in appeal has not adverted to the aspect that total area shown in the site plan is much more than the area, subject matter of agreement of sale. In view of discussion made hereinbefore, the respondents shall be entitle to protect their possession in part performance of the agreement only in respect of area measuring 200 square yards. With regard to area measuring 72 square yards previously owned by Sh. Mool Chand, the appellants shall be entitle to recover its possession by taking recourse to remedy in law as the respondents are in possession of that area as tenants under the previous owner, in view of entries in the jamabandi and contention of the appellants in the written statement.

With regard to area beyond 272 square yards, since the appellants have not claimed any right in the said area, they are not entitle to disturb possession of the respondents in respect of that area. In this view of the matter, findings recorded by the first Appellate Court are modified in the aforesaid terms.

In view of what has been discussed hereinbefore, the appeal stands disposed of with modification in the aforesaid terms.

AUGUST 26, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable	:	yes/no
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2	:	yes/no
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