

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

RSA No.2052 of 2017(O&M)

Date of Decision:15.07.2019

Kusum Lala

.....APPELLANT

Vs.

Veena Rani and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.Raj Kapoor Malik, Advocate for the
applicant-appellant.

Mr.B.S.Bedi, Advocate for respondents No. 1 to 5.

DR. RAVI RANJAN, J.(Oral Judgement)

CM-4935-CI-2017

This is an application filed under Section 5 of the Limitation Act seeking condonation of delay of 08 days which has occurred in filing the present appeal.

Heard.

Having regard to the submissions made in the application, the same is allowed and the delay of 08 days in filing the present appeal, is hereby condoned.

RSA No.2052 of 2017(O&M)

This appeal, in terms of the order dated 19.03.2018 passed by a coordinate Bench of this Court, was referred to the Mediation & Conciliation Centre of this Court for exploring the possibility of amicable settlement between the parties. However, as per report dated 30.04.2018 of the Mediator, despite efforts, no settlement could be reached between the parties. Accordingly, the matter is to be considered on its own merits.

This appeal has been preferred assailing the Judgment and Decree dated 18.11.2016 passed in Civil Appeal No.RBT-124 of 2015 by the Ld. Addl. District Judge, Kaithal, by which the Judgment and Decree dated 31.07.2014 passed by Ld. Civil Judge (Sr. Division), Kaithal in Civil Suit No.309 of 2009 has been affirmed and the appeal has been dismissed by the First Appellate Court.

Short facts which would be necessary for consideration of the *lis* stand enumerated as under:-

The plaintiffs (respondents herein) instituted a civil suit for declaration that the suit land which stands fully described in the plaint, is owned and possessed by them, as their predecessor-in-interest, v.i.z, Joginder Kumar, had acquired it through a registered sale deed No. 2960/1, dated 21.07.1990 executed by defendant No.1, v.i.z., Jagdish Chander being General Power of Attorney holder of defendant No.2-Vikramjit Singh, who was the owner in possession of the suit land. Since then they claimed to be owners in possession of the suit land. Plaintiffs claim to have constructed temporary rooms over the plot in dispute. However, defendant No.3, namely, Raj Bala and defendant No.4, namely, Kusum Lata (appellant herein) alleged themselves as purchasers of part of said plot. Defendant No.3 claimed that the part of said suit plot measuring 3.53 marlas (107 sq. yards) is owned and possessed by her and defendant No.4 claimed that the part of said plot measuring 3.53 marlas (107 sq. yards) is owned and possessed by her. The plaintiffs allege that both the defendants were threatening and manipulating to interfere into the lawful and peaceful possession of the plaintiffs over the plot in dispute. In the southern portion of the plot, the defendant No.3 had entered into possession of part of it measuring about 100 sq. yards about one year ago.

Upon notice, the suit was contested by the defendants. Defendant No.1 filed written statement denying the fact that he has ever sold the property in dispute to the predecessor-in-interest of the plaintiffs. He further alleged that the sale deed dated 21.07.1990(Ex.PA) is false and fabricated document as he never signed or put his thumbs mark upon it. He also averred that the possession of the property in dispute was never handed over to the predecessor-in-interest of the plaintiffs.

Defendant No.4 along with defendant No.3, in their respective written statements, claimed themselves to be the bona fide purchasers from the previous owners. Defendant No.4-Kusum Lata (appellant herein) claimed that she purchased land measuring 107 sq. yards out of suit property vide sale deed No.3355, dated 30.10.2006 from one Rattan Lal on passing of valuable sale consideration. Mutation of the said land stood incorporated in favour of her vendor, Rattan Lal. Vendor had delivered the actual physical possession to defendant No.4. Appellant/Defendant No.4-Kusum Lata claimed in her written statement that her vendor Rattan Lal purchased the said land from its owner defendant No.1 being General Power of Attorney holder of defendant No.2. As such, she claimed that the sale deed executed in the year 1990 in favour of the predecessor-in-interest of the plaintiffs was a bogus, false and frivolous document and it did not confer and right, title or interest upon the plaintiffs as the same was never acted upon. No actual possession of the land was ever given or delivered by the vendors in favour of the plaintiffs. Both the defendants claimed that they were bona fide purchasers of their respective lands.

The Trial Court, on appreciation of the rival pleadings of the parties, framed following issues:-`

“1. Whether the plaintiffs are owner in possession of the land/plot as described in para no.1 of the plaint vide registered sale deed no.2960/1 dated 21.07.1990? OPP.

2. Whether the plaintiff were being dispossessed from the suit land by the defendants No. 3 and 4 under the garb of sale deeds in their favour?OPP

3. Whether the plaintiffs are entitled to the relief of declaration and permanent injunction in case issues No. 1 and 2 are proved? OPP

4. Whether the plaintiffs have no locus standi to file the present suit? OPD.

5. Whether the suit is not maintainable in the present form?OPD

6.Whether the suit of the plaintiffs is not properly valued for the purpose of court fee and jurisdiction? OPD

7.Whether the suit of the plaintiffs is bad for non-joinder and mis-joinder of necessary parties?OPD

8. Whether the plaintiffs have suppressed true and material facts from the court?OPD

9. Relief.”

The Trial Court returned its finding on issue Nos. 1 to 3 in favour of the plaintiffs holding that once the General Power of Attorney holder of defendant No.2, i.e., defendant No.1-Jagdish Chander had sold the entire land which he was authorized to sell vide GPA Ex.P-AA, defendant No.2 remained with no share in the entire land of Khewat No.628 Khatoni no.800 Khasra No.440 and, thus, he did not have any right thereafter to again sell his share. Accordingly, the suit of the plaintiff was decreed with costs declaring the plaintiffs to be owner in possession of the suit land detailed in the plaint. The decree of possession and further a decree of permanent injunction was passed in favour of the plaintiffs against the defendants restraining them from interfering

into the possession of the plaintiffs and from alienating the suit property.

The decree of the Trial Court was put to challenge before the First Appellate Court by filing Civil Appeal No.RBT-124 of 2015, which was also dismissed.

Learned counsel for the appellant-Kusum Lata has vehemently argued that the appellant was a bona fide purchaser through a registered sale deed executed as discussed above. A specific plea under Section 41 of the Transfer of Property Act has been raised by the appellant but no issue was framed by the Trial Court or no finding was recorded with respect to that.

It has further been urged that there is lack of identification of land purchased by the plaintiffs, therefore, no injunction can be granted as the plaintiffs failed to prove that possession of defendants No. 3 and 4 was over the portion of the land which was allegedly purchased by them from defendant No.2 through his General Power of Attorney holder, i.e., defendant No.1.

I have given anxious consideration to the aforesaid submissions made on behalf of the appellant. It is admitted position that sale deed of plaintiffs is of much earlier date, i.e., 21.07.1990 (Ex.PA) to the sale deed of the appellant which was executed in the year 2006.

The plaintiffs have also examined the Scribe Rakesh Kumar Gupta of the aforesaid document as PW-2.

Both the Courts have noticed that the Scribe Rakesh Kumar Gupta has deposed that the sale deed was scribed by him in his own hand writing at the asking of defenant No.1-Jagdish Chander, being General Power of Attorney holder of defendant No.2-Vikramjit Singh. He further deposed that the same was registered at Serial No. 928 in the register of Department of Registration.

Plaintiff has also examined Navdeep Gupta, Handwriting and Finder Prints

Expert as PW-3, who, after comparing the standard signature of defendant No.1-Jagdish Chander with the disputed signatures on the sale deed of the year 1990 (Ex. PA), submitted a report (Ex.PB) stating that the disputed signatures on the sale deed are of Jagdish Chander, defendant No.1.

On the other hand, no evidence was led by the defendants to disprove the fact that the signatures are not of defendant No.1. Even, defendant No.1-Jagdish Chander could not do that.

General plea of learned counsel for defendants No. 3 and 4 is that the evidence of scribe is not sufficient to prove the sale deed and further that the evidence of Handwriting and Finger Print Expert cannot be relied upon and his report was not proper as he did not take the standard signatures properly with the permission of the Court. It has been contended that the sale deed is required to be proved under Section 64 of the Indian Evidence Act, which has not been done. However, it has been come on record that the attesting witnesses have died and once the Scribe is examined and cross-examined and the Handwriting Expert has submitted a report that signatures on the sale deed is of defendant No.1-Jagdish Chander being General Power of Attorney holder of defendant No.2, i.e., owner of the suit land, which could not rebutted by the defendants, this limb of argument would not be available to them. Thus, both the Courts below have rightly held that sale deed executed in favour of the plaintiffs having been executed much earlier in the year 1990, would prevail and shall take preference over the other sale deed as the moment the earlier sale deed was executed and registered, the seller was not competent to re-sell the property to anybody having already dispensed with his title over the same.

So far as the identity is concerned, both the Courts have held that the identity of the land is clearly established which is apparent from the Power

of Attorney which has been put on record and also the earlier sale deed. That apart, the same Power of Attorney Holder, who had sold the land in favour of predecessor-in-interest of the plaintiffs, had sold it again in favour of defendants No. 3 and 4. Thus, they cannot take a stand that, from the General Power of Attorney, identity of the land in dispute is not established. Otherwise their title also goes automatically on such ground.

So far as the issue of being bona fide purchaser is concerned, the Courts below have noticed that the mutation order placed on record EX.PAF dated 26.01.1998 clearly goes to show that land was duly mutated in favour of the plaintiffs and that relates to sale deed No.2960 dated 21.07.1990. Thus, in such a situation, defendant No.4 was duty bound to examine the relevant record and only then he could have entered into any contract for sale. Thus, in the presence of such lack of due diligence on their part in verifying the revenue records, defendant No.4 can hardly raise a question regarding bona fide purchase.

Apart from the above, once both the Courts have returned the concurrent finding that the sale deed of the year 1990 in favour of the plaintiffs is a valid document, thus, even if it is assumed that defendant No.4 is a bona fide purchaser, no title will flow to her as her vendor had already alienated the property. Defendant No.4 may have any legal remedy against her vendor for such purpose but she cannot have any claim as against the plaintiffs.

Both the Courts have also held that defendant No.3 was, to the extent of 100 square yards, in possession and the remaining portion of the land is lying vacant. Possession of vacant land would go with the ownership, i.e., to the plaintiffs. However, since the defendants have been held to be in illegal possession of 107 sq. yards of land, both the Courts below have rightly come to

the conclusion that possession has to be delivered in favour of the plaintiffs and has rightly pass a decree of injunction also.

Having regard to the aforesaid discussion, I am of the view that, no cogent ground or substantial question of law could be raised on behalf of the appellant warranting any interference in the Judgment and decree passed by both the Courts below.

In the result, this appeal fails and is dismissed, however, there would be no order as to costs.

However, before parting with the matter, I would clarify that the present order is only with respect to the present appellant-Kusum Lata (defendant No.4 before the Trial Court in Civil Suit No.309 of 2009), as another Appeal filed before this Court, i.e., RSA No.2051 of 2017 preferred by Raj Bala (defendant No.3 before the Trial Court in Civil Suit No.309 of 2009) has already been disposed of by this Court vide separate order of even date, i.e., on 15.07.2019 in view of the settlement reached between the parties before the Mediation & Conciliation Centre of this Court.

(DR. RAVI RANJAN)
JUDGE

15.07.2019
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No