

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

Date of decision: 29.01.2019

1. RSA No.5813 of 2014 (O&M)

Gurmail Singh

..... Appellant

Versus

Amarjit Singh

..... Respondent

2. RSA No.5563 of 2014 (O&M)

Gurmail Singh

..... Appellant

Versus

Amarjit Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Jindal, Sr. Advocate with
Mr. Amandeep Singh Meho, Advocate
for the appellant (in both cases).

Mr. Mohd. Yousaf, Advocate
for the respondent (in both cases).

ANIL KSHETARPAL, J.

Vide this judgment, I shall be disposing of two appeals bearing RSA No.5813 of 2014 and RSA No.5563 of 2014 which are connected. One appeal is arising out of the suit for possession filed by the plaintiff-appellant Gurmail Singh whereas other appeal is filed by the same Gurmail Singh against a judgment in a suit for injunction. Learned trial Court decreed both the suits filed by the plaintiff whereas First Appellate Court has reversed the judgment in both the cases.

Plaintiff claiming to be owner of 10 marla property comprised in Khewat No.115, Khatoni No.153, Khasra No.2624/11912 situated at Adda Kathar, Adda Kathar-Manko Road, Tehsil and District Jalandhar (Pb.) claimed possession by asserting that the defendant was inducted as a tenant and tenancy was terminated by notice dated 05.08.2009 but the defendant has failed to vacate. In the written statement, the defendant-respondent contested the suit by pleading that there was no relationship of landlord and tenant. It was pleaded that Charan Singh, Nagina Singh and Pritam Singh predecessors of the defendant-respondent had purchased the property from forefathers of the plaintiff and they are in continuous possession thereof since 1950. In alternative, the defendant claimed that he has perfected his title by way of adverse possession.

Both the Courts have found that the plaintiff has failed to prove his case with regard to tenancy. However, learned trial Court decreed the suit on the ground that the defendant has failed to prove that the property was purchased by his ancestors from the ancestors of plaintiff. It will be significant to note that an unregistered sale deed for a sale consideration of Rs.50/- has been produced on file as Ex.D-1/A dated 19.02.1947. In order to prove this sale deed, since Dhana Singh-marginal witness had died, Resham Singh, his son was examined who identified thumb impression of Dhana Singh on the sale deed. He also stated that his father had told him about the sale transaction.

Learned trial Court ignored the document while giving the three reasons:-

1. The sale deed has not been proved in accordance with Evidence Act, 1872.

2. The document is not admissible being unregistered.
3. The original document is in Urdu, translation whereof has been produced but the translation has not been proved. (It will be noted that the original document i.e. Ex.D-1/A is on the file).

Learned First Appellate Court after re-appreciating the evidence found that the sale deed dated 19.02.1947 is not required to be registered and it has been proved on examination of Resham Singh son of Dhana Singh. The Court further found that the sale deed being more than 30 years old document and having come from proper custody, has presumption of correctness under Section 90 of the Evidence Act, 1872.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned senior counsel appearing for the appellant has submitted that the alleged sale deed Ex.D-1/A dated 19.02.1947 is on a plain paper and as per the provisions of Stamp Act, it was required to be stamped with stamp of Rs.3/-. Hence, such document is not admissible. He has drawn attention of the Court to the statement of PW-1 who produced the document and the plaintiff objected thereto. Learned counsel has submitted that the objection has not been decided.

As regards deficiency in stamp duty, it will be noticed that no doubt admissibility of the document was objected to but thereafter neither in the trial Court nor before the First Appellate Court this objection was ever pressed by the plaintiff-appellant. A reading of the judgment of the trial Court as well as First Appellate Court does not indicate that the admissibility of document on this ground was contested/objected to. The

document has been exhibited on the record of the trial Court. As per Section 36 of the Stamp Act, once an instrument has been admitted in evidence, its admission cannot be questioned except as provided in under Section 61 of the Stamp Act. Learned counsel for the appellant could not draw attention of the Court to the fact that the document was not admissible in accordance with Section 61 of the Stamp Act, 1899.

It has been noticed that the objections to the admissibility of documents are kept open and thereafter never decided. This is not a correct practice. Most of the objections to the admissibility of a document can be decided there and then. Like in the present case, objection to the admissibility of the document in evidence ought to have been decided there and then, then the party would have got an opportunity to pay the deficiency in stamp duty along with penalty and objection to the admissibility would have been over. Now at this stage, when two Courts have decided the case on the ground that the document is admissible in evidence, it has too later stage to adopt such recourse. Most of the time, the objections to the admissibility of documents are on late production in evidence, deficiency in stamp duty etc. which can be conveniently and more effectively sorted out at that stage only.

Learned counsel for the appellant further submitted that the document dated 19.02.1947 is forged as khasra number mentioned is the same as is the current khasra number. He submitted that in consolidation of holdings, khasra number was bound to change.

It will be noted that the argument of learned counsel is without any material on the file. No evidence has been brought to prove that prior to consolidation, the land was comprised in different khasra numbers or

ever consolidation of holdings had taken place. In such circumstances, the argument of learned senior counsel is without substance.

Learned senior counsel has further submitted that onus to prove the sale deed Ex.D-1/A was on the defendant and the defendant has failed to prove that fact.

It will be noted that the present suit was filed in the year 2009. The document was executed more than 72 years ago, therefore, neither executant nor marginal witnesses are expected to be alive. The defendant has examined son of the marginal witness who has identified the thumb impression of his father. The sale deed is alleged to have been executed by Ujaggar Singh who was predecessor-in-interest of the plaintiff. The plaintiff has not produced any evidence to prove that fact. No doubt, onus was on the defendant to prove the sale deed but once the document was produced and the son of the attesting witness was examined, initial onus stood discharged and therefore, the plaintiff was expected to lead evidence. Ujaggar Singh was predecessor-in-interest of the plaintiff and therefore, he could have produced evidence that the signatures of the Ujaggar Singh do not tally/match. It is not in dispute that Ujaggar Singh was owner of the property in the year 1947.

Learned senior counsel for the appellant has further submitted that the document has not come from proper custody and therefore, Section 90 of the Evidence Act would not apply. The document has been produced by Amarjit Singh who is successor-in-interest of the purchasers namely Nagina Singh, Charan Singh and Pritam Singh. Therefore, the document is from the proper custody as the sale deed is ordinarily in the custody of the purchaser. Learned counsel for the appellant could not draw attention of

the Court to any other factor which will bring out the case from Section 90 of the Evidence Act, 1872.

Still further, the defendant has also produced on file the evidence to prove that electricity, water and sewerage connection is in his name.

Keeping in view the aforesaid facts, there is no ground to interfere with the judgment passed by the First Appellate Court.

The pending miscellaneous application, if any, in both the appeals, shall stand disposed of accordingly.

Both the appeals are dismissed.

29.01.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No