

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

CM Nos. 4534 and 4536 C of 2019 in/and
RSA No. 5900 of 2018 (O&M)
Date of decision: 23.5.2019

Mahinder Singh and others

...Appellants

Versus

Smt. Savitri Devi and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Harinath Ram, Advocate,
for the appellants.

JAISHREE THAKUR, J.

CM Nos. 4534 and 4536 C of 2019

The applications are allowed. Exemption as prayed for is granted and the documents Annexure A/1 to A/4 are taken on record.

CM stand disposed of.

Main case

The instant Regular Second Appeal has been filed by the appellants against the judgment and decree dated 10.9.2018 passed by the Additional District Judge, Rewari, vide which the judgment and decree dated 29.7.2015 passed by the trial court was set aside and the civil suit filed by the plaintiffs/appellants has been dismissed.

The facts in brief are that the plaintiff/appellants (hereinafter referred to as '**the plaintiff**') filed a suit for declaration to the effect that the plaintiff, along with perma defendants, is owner in possession of the plot

in dispute. It was averred that the father of the plaintiff and performa defendants purchased one plot shown with letter ABCD in the site plan from Tara Chand son of Het Ram on 29.5.1985 for a sum of ₹2,000/-. Writing to this effect was made in the *bahi* of the plaintiff in the presence of witnesses. The amount was paid to the father of defendant No.1/respondent No.2 herein (hereinafter referred to as '**defendant No.1**') who marked his thumb impression on the revenue stamp and also put his signatures on the writing. After the purchase, father of the plaintiff came into possession of the plot and constructed the boundary wall over it. After the death of the father of the plaintiff and performa defendants they have planted trees in this plot. This fact is very much in the knowledge of the defendant No.1, but he taking undue advantage of the entries in the revenue record has sold the plot illegally to defendant No.2/respondent No.1 herein (hereinafter referred to as '**defendant No.2**') on 25.3.2010.

On notice, defendant No. 1 contested the suit, inter-alia, taking preliminary objection regarding maintainability of the suit, locus-standi of the plaintiff etc. Possession of the plaintiff and performa defendants over the plot in dispute was denied. It was stated that revenue stamp and the writing in *Bahi* are not the proof of sale deed and defendant No.2, who had purchased the plot, vide registered sale deed dated 25.3.2010, is in possession of the property since the date of her purchase.

Defendant No.2 also contested the suit by filing written statement averring that she has purchased the plot from defendant No.1 and she is in possession of the same since the date of purchase.

On completion of pleadings of the parties, the trial court framed

the issues and thereafter the parties led evidence in support of their respective claims.

The plaintiff in order to establish his claim, examined PW-1 to PW7 and also exhibited certain documents. Similarly, the defendants examined DW-1 to DW3 and also exhibited certain documents. The trial court, after examining the oral well as documentary evidence, while observing that *“it is pertinent to mention here that plaintiff has specifically stated in para no. 2 of the plaint that father of defendant no.1 marked his thumb impressions on the revenue stamp and defendant no.1 signed the pleading. In reply to this assertion defendant no.1 has not specifically denied his signatures or thumb impression of the father on the same. As per settled law when there is no specific denial then those facts are presumed to be admitted. Although, as per defendant, this document is forged one. Strangely, he has not examined even a single witness to prove the fact regarding the forgery committed by the plaintiff. He has not even pleaded that he has taken any criminal action against the father of the plaintiff or plaintiff himself in this regard...”* decreed the suit filed by the plaintiff.

Aggrieved against the judgment and decree of the trial court, defendants No.1 and 2 filed an appeal before the first Appellate Court, who reversed the judgment and decree of the trial court and dismissed the suit filed by the plaintiff. Hence the instant appeal.

Learned counsel appearing on behalf of the plaintiff/appellants herein submits that the first Appellate Court has wrongly reversed the well reasoned judgment passed by the trial court. It is submitted that the

plaintiff/appellant produced the original *bahi* Ex. PW6/B and from the original *bahi*, the photocopy of the bahi entry Mark-A was proved. It is argued that the witnesses to the *bahi* were examined by the plaintiff to prove its execution by vendor Tara Chand. It is further argued that once the sale of the plot in dispute by the father of defendant No.1 in favour of the father the plaintiff has been duly established on the record, the first Appellate Court ought not to have interfered with the well reasoned judgment of the trial court.

I have heard learned counsel for the appellants and perused the impugned judgments.

It is alleged that on 29.5.1985, Tara Chand, father of defendant No.1 sold the plot in dispute to Malha Ram, the father of the plaintiff, after receiving the sale consideration of ₹2,000/-, by way of execution of *bahi* Ex. PW6/B. The sole question that arises for consideration in this case is, whether once due execution of the *bahi* is proved on the record, then whether that fact itself would confer the ownership right of the plot in favour of the father of the plaintiff? This entry (*bahi*) is pertaining to sale of immovable property valuing more than ₹100/-, therefore, it requires compulsory registration under Section 17 of the Indian Registration Act, 1908. It is settled law that under Section 54 of the Transfer of Property Act, 1882, the said transaction was required to be registered. In this regard reliance can be placed on the judgment rendered in **The Greater Bombay Cooperative Bank Ltd. Vs. Nagraj Ganeshmal Jain & Ors. 2017 (Suppl) CCC 712 (SC)**, wherein the Hon'ble Supreme Court held that under Section 17 of the Indian Registration Act, immovable property can be transferred

only by registered document and there cannot be any transfer of any right, title and interest in movable property except by way of registered document. Further a three Judges Bench of the Hon'ble Supreme Court in **Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana and another 2011 (4) RCR (Civil) 669 (SC)**, held that no immovable property can be legally transferred or conveyed through a general power of attorney. It has been held that transfer of immovable property by way of sale can only be by a deed or conveyance deed (sale deed) and in the absence of the same, no right, title and interest in the immovable property can be transferred.

Learned counsel for the appellants has not been able to counter the above settled proposition of law nor has been able to prove that the plot in question was transferred in the name of the plaintiff's father by way of sale deed duly executed by the revenue authorities. The trial court had definitely erred in allowing the suit of the plaintiff without a sale deed on the record, which error stands corrected by the first Appellate Court. The impugned judgment of the Additional District Judge is well considered. No question of law, much less substantial question of law arises for consideration in the present appeal.

The Regular Second Appeal stand dismissed accordingly.

23.5.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No