

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

**RSA No.2324 of 2019 (O&M)
Date of Decision: 06.01.2020**

Naginder Singh and another

.....Appellants

Versus

General Public and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Preetwinder Singh Dhaliwal, Advocate
for the applicants-appellants.

LISA GILL, J.

Appellants-plaintiffs, have filed this appeal being aggrieved of judgment and decree dated 24.12.2014, passed by the learned Civil Judge (Jr. Division), S.A.S Nagar, Mohali, as well as judgment and decree dated 22.05.2018, passed by the learned Additional District Judge, S.A.S. Nagar, Mohali, whereby suit filed by the appellants-plaintiffs, seeking declaration to the effect that they have become owners of the suit property and for mandatory injunction seeking issuance of directions to respondent no.2 (PUDA), for transferring the suit property in their favour, has been dismissed.

Brief facts necessary for the adjudication of the case are that the appellants-plaintiffs claimed that the property in question i.e., HIG House No. 1604 , Phasae IX, Mohali, was allotted to Amar Singh Sawhney son of Sant Singh on 20.10.1987 under the partial self financing scheme.

Possession of the same was handed over on 30.12.1987. It is pleaded that the said house was sold by Amar Singh Sawhney to Gureshwar Singh by way of an agreement to sell along with an affidavit executed before the Executive Magistrate, Delhi on 24.11.1989, after receiving full and final payment thereof. Vacant possession of the house was statedly handed over to Gureshwar Singh. Subsequently, Gureshwar Singh, is claimed to have sold the house to Balraj Singh, after receiving full and final payment. Vacant possession of the house was handed over to Balraj Singh. Balraj Singh, is the father of the plaintiffs and proforma defendants no.3 to 5. It is claimed that Balraj Singh executed a registered will dated 09.05.2000 bequeathing the suit property to the plaintiffs, to the exclusion of his daughters i.e. defendants no.3 to 5. Plaintiffs approached the authorities for transfer of the property in their name, but the property was not transferred. Therefore, the present suit was filed.

Defendants no.1 and 2, were proceeded *ex parte* and defendants no.3 to 5, admitted the plaintiffs claim.

Replication was not filed. Issues were not framed as defendants no.3 to 5, admitted the claim of the plaintiffs.

Plaintiffs led evidence in support of their claim/stand. However, no evidence was obviously led by the defendants who were *ex parte*.

Learned trial Court on considering the evidence on record, facts and circumstances of the case, dismissed the suit filed by the plaintiffs, while observing that the plaintiffs failed to prove even the passing of a valid title from Amar Singh Sawhney to Balraj Singh i.e., the plaintiffs father. It is further observed that neither Amar Singh Sawhney or Gureshwar Singh,

were impleaded as parties to the suit. Appeal filed by the plaintiffs was dismissed by the learned Additional District Judge, SAS Nagar, Mohali, vide impugned judgement and decree dated 22.05.2018.

Aggrieved therefrom, present appeal has been filed by the appellants-plaintiffs.

Learned counsel for the appellants vehemently argues that both the learned Courts below have grossly erred in law and on facts in dismissing the suit filed by the plaintiffs. It is submitted that once the General Public was impleaded and none had appeared to contest the proceedings, there was no necessity of impleading Amar Singh Sawhney or Gureshwar Singh as parties to the suit. It is further submitted that, in case, it was considered necessary, the learned trial Court should have directed impleadment of the abovesaid two persons and then proceeded with the matter. In any case, it is urged that even at this stage, the matter should be remanded before the learned trial Court with liberty to the appellants to implead the original owner-Amar Singh Sahwney as well as Gureshwar Singh, the general power of attorney of Amar Singh Sawhney, who is purported to have re-conveyed the title, through a special power of attorney in favour of Balraj Singh, the father of the appellants. It is thus prayed that the present appeal be allowed and the judgements and decrees passed by the learned Courts be set aside. Consequently suit filed by the appellants be decreed throughout.

I have heard learned counsel for the appellants and have gone file with his assistance.

The foundation of the suit is laid by the appellants on the

ground that the house in question was originally allotted to one Amar Singh Sahwney on 20.10.1987 and possession of the same was handed over to him on 30.12.1987. The house in question, is claimed to have been sold by Amar Singh Sawhney to Gureshwar Singh and possession thereof was handed over subsequent to an agreement to sell along with an affidavit before the Executive Magistrate, Delhi on 24.11.1989. Subsequently, Gureshwar Singh, is claimed to have sold the house to Balraj Singh, father of the plaintiffs and executed an agreement to sell in favour of Balraj Singh, an affidavit and possession letter confirming the receipt of full and final payment. The present appellants-plaintiffs claim title to the property through a registered will dated 09.05.2000 executed by Balraj Singh. In order to prove their case, the plaintiffs examined PW-1-Darshan Singh and PW-2-Mohinder Singh. Plaintiff no.3 testified as PW-3 and plaintiff no.1 testified as PW-4. PW-5-Parminder Kaur Dhillon, was examined as well.

Learned counsel for the appellants is unable to deny that there is indeed no sale deed executed by the original allottee Amar Singh Sawhney in favour of Gureshwar Singh or by Gureshwar Singh in favour of Balraj Singh. There can indeed be no transfer of title by way of an agreement to sell. Learned Additional District Judge, SAS Nagar, Mohali, has correctly relied upon the judgement of the Hon'ble Supreme Court in **Suraj Lamp and Industries Private Limited Vs. State of Haryana and another** 2011(4) RCR (Civil) 669, wherein it is specifically held that no immoveable property can be legally transferred or conveyed through an agreement to sell or will or special general power of attorney. Such instruments cannot be recognized as deeds of title except to the limited extent of Section 53-A of

Transfer of Property Act, 1882 and neither can such transactions be relied upon or made the basis for mutations to be entered in the Municipal or Revenue Records. The Hon'ble Supreme Court in **Suraj Lamp's** case (supra), has duly clarified that if the documents relating to the special power of attorney, general power of attorney or will transactions etc., have been accepted and acted upon by the concerned authorities to effect mutation, they need not be disturbed. Concededly, there is no evidence on record led by the appellants to indicate that the said transactions had at any point of time been accepted by the authorities. Therefore, the argument raised by learned counsel that the suit, in any case, should be allowed, as PUDA was proceeded *ex parte*, is not correct. It is a settled position that the plaintiffs have to stand on their own feet and not rely upon the weakness, if any, of the defendants.

Learned counsel for the appellants, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal or any ground for interference in terms of Section 41 of the Punjab Courts Act. Both the learned Courts below, after proper appreciation and consideration of the evidence on record have returned concurrent findings, vide impugned judgements, which call for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 24.12.2014 and 22.05.2018 passed by the learned Civil Judge (Jr. Division) S.A.S Nagar, Mohali and learned Additional District Judge, S.A.S.Nagar, Mohali, respectively, are

upheld.

There is a delay of 234 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing of this appeal is rendered academic. Application is disposed of accordingly.

Present appeal is, consequently, dismissed with no order as to cost.

06.01.2020

s.khan

[LISA GILL]

Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.