

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3983-2015 (O&M)
Date of Order:13.02.2020

Rameshwar Narwal @ Naharwal and another

..Appellants

Versus

Amit Vashisht

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K.S.Bedi, Advocate,
for the appellants.

Mr. Ranjit Saini, Advocate
for the respondent(s)

ANIL KSHETARPAL, J(Oral)

Defendant no.1-appellant has filed the present regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing suit for mandatory injunction by directing the defendants to hand over possession of House No.749, Sector 2, Panchkula, within 3 months along with mesne profit @ Rs.5000/- per month from the date of filing of the suit till actual delivery of vacant and physical possession of the suit property.

At the outset, it may be noticed that the cross suit filed by the appellant seeking declaration that he is co-owner in the property has been dismissed. Regular Second Appeal filed by the appellant i.e. RSA No.3817 of 2015 in the suit for declaration filed by him has already been dismissed, on 05.10.2015. Hence, plaintiff-respondent has been declared owner of the disputed property. No further appeal was filed.

This court has heard learned counsels for the parties at length and with their able assistance gone through the judgments passed by the courts below.

Learned counsel for the appellant submitted that the sale deed executed by the brother and sister-in-law of defendant in favour of respondent-plaintiff dated 23.01.2004 is not proved because the power of attorney on the basis whereof the sale deed was executed has not been produced. He further submitted that payment of the sale consideration has also not been proved. He further submitted that the day the plaintiff-respondent purchased the property the licence stood terminated in terms of Section 62 of the Easement Act, 1982, therefore, only suit for possession was maintainable.

On the other hand, learned counsel for the respondent submitted that once the suit filed by the plaintiff for declaration that he is owner to the extent of 1/5th share has already been dismissed, therefore, plaintiff cannot now challenge the title.

This Court has considered the submissions of learned counsels for the parties.

As far as proof of sale deed, it may be noted that Shivinder Narwal and Mrs. Amrit Narwal wife of Shivinder Narwal had executed the sale deed in favour of the respondent-plaintiff. Original copy of the sale deed has been produced. After the sale deed, Haryana Urban Development Authority also issued re-allotment letter in favour of the plaintiff. Shivinder Narwal and Amrit Narwal have never questioned the sale deed. Thus, the vendors do not dispute the registered sale deed executed by them in favour of the plaintiff. In such circumstances, mere non-production of the original

power of attorney would not be sufficient to hold that the sale deed had not been proved.

As regards argument of learned counsel that the payment of sale consideration has not been proved, it may be noted that the argument is liable to be rejected on three counts:-

- (1) the vendors are neither disputing the sale deed nor claiming that the sale is without consideration;
- (2) defendant-appellant is not party to the aforesaid sale deed and has no locus standi to question the consideration;
- (3) normally the original sale deed cannot be set aside on the ground that the amount of sale consideration has not been paid.

Last argument of learned counsel for the appellant that on the execution of the sale deed the licence in favour of defendants came to an end. To this extent, the argument is correct as per Section 62 of the Easement Act, 1982. However, once the licence in favour of the defendants stood revoked, their possession did not continue to be permissive. The suit for mandatory injunction was filed within a period of one year. In such circumstances, suit filed by the plaintiff for relief of mandatory injunction is maintainable.

In view thereof, there is no ground to interfere.

Dismissed.

February 13, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No