

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

RSA-368-2021 (O&M)
Date of decision: 21.03.2022

Sohan PalAppellant

versus

Balvinder Kaur @ Bindri and othersRespondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Shiv Kumar, Advocate
for the appellant.

None for respondent No.1.

Mr. Parveen Mehta, Advocate
for respondent No.2.

Mr. Saurabh Mohunta, DAG, Haryana
for respondent No.3.

FATEH DEEP SINGH, J.

Now appellant, then plaintiff-Sohan Pal had earlier filed a suit for permanent injunction and mandatory injunction, wherein, he sought a claim that he is the absolute owner in actual, physical and exclusive possession of a residential house in all measuring 35 square yards bearing No. M-456 located in Gandhi Colony, Faridabad, Tehsil and District Faridabad. It is alleged by

the plaintiff that the house in question was allotted to one Amar Singh s/o Mohan Singh, who happens to be husband of defendant No.1-Balvinder Kaur @ Bindri, now respondent No.1, by the Rehabilitation Department through Tehsildar (Sales)-cum-Managing Officer, Faridabad under the Jan Kalyan Yojna vide allotment letter No.1267 dated 14.08.1986. The plaintiff has laid claim that the original allottee sold the house to one Mahender Singh s/o Kishan Lal and the actual physical possession was handed over to this buyer. The averments that Mahender Singh @ Mahender Kumar s/o Kishan Lal deposited Rs.143/- as house tax for the year 1999-2000 on 08.08.2000 vide receipt No.3557/25 had sold it to the plaintiff through an agreement to sell-cum-receipt of a sum of Rs.1,30,000/- on 19.06.2004 for which, he also executed a receipt and handed over the possession to the plaintiff the same very day and, therefore, claim that since then, the plaintiff is owner in possession of the said property. When faced with the threat from the defendant/respondent No.1-Balvinder Kaur @ Bindri and others, the plaintiff filed the suit in question.

Defendant No.1-Balvinder Kaur took the plea of concealment of material facts and denied that the plaintiff was

either owner or in possession of the said property and claimed that upon death of Amar Singh s/o Mohan Singh, the original allottee-cum-owner, she has inherited to this estate being the widow of the deceased and denied any sale agreement so claimed by the plaintiff and termed the said document to be forged and fabricated document. It is rather alleged by the answering defendant No.1 that the plaintiff is trying to oust her from the said property in order to grab the same and sought dismissal of the suit. Defendant No.2-Municipal Corporation, Faridabad claimed that in the absence of Ministry of Rehabilitation which was a necessary party suit does not lie. It is claimed that plaintiff has not come to the Court with clean hands and that the suit was bad under the law and the plaintiff had no right title of interest in the property in question and has re-stated the stand of defendant No.1. It is alleged that under the terms and conditions of this allotment the property could not be further alienated for a period of 10 years and was to be used purely for residential purposes and cannot be put to any other use and sought dismissal of the suit.

The trial Court framed the following issues:-

1. Whether the plaintiff is entitled to a decree of permanent injunction as alleged. OPP

2. Whether the plaintiff is entitled to a decree of mandatory injunction as alleged. OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiffs have no cause of action to file the present suit? OPD
5. Whether the plaintiffs have no locus standi to file the present suit? OPD
6. Whether the plaintiffs have not come to the court with clean hands? OPD
7. Whether no proper court fee has been affixed on the plaint? OPD
8. Relief.

The plaintiff-Sohan Pal examined himself as PW-1, Mahender Singh as PW-2, Aawaat Singh as PW-3 and proved documents as Ex.P-1 to Ex.P-17, Mark 'A1' to Mark 'A4'. The defendant examined Narender Kumar, Clerk, Municipal Corporation, Faridabad as DW-1, Dalbir Singh (Kanungo) as DW-2, Balvinder Kaur as DW-3, Tirlok Singh as DW-4 and Joginder Kaur as DW-5 and in the process proved documents as Ex.D-1 to Ex.D-5, Ex.DW-4/1, Ex.DW-5/1, Mark 'A', Mark 'B' and Mark 'C' and closed the evidence.

The learned Court of Civil Judge (Junior Division), Faridabad vide judgment/decreed dated 22.05.2018, ordered the defendants not to dispossess the plaintiff from the suit property

except in due course of law.

Upon appeal by Balvinder Kaur @ Bindri, the Court of learned Additional District Judge, Faridabad, through impugned finding dated 25.01.2021, allowed the appeal and dismissed the suit that is how the parties are before this Court in the regular second appeal by the unsuccessful plaintiff-Sohan Pal.

In view of the recent pronouncement in 'Kirodi (since deceased) through his LR vs. Ram Parkash and others' Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

Heard learned counsel for the parties and perused the records.

It is well enshrined law that a plaintiff is supposed to stand on his own legs and cannot be allowed to take undue benefit of the weaknesses of the case of the opposite side. It is the plaintiff now appellant-Sohan Pal who has filed this suit and,

therefore, heavy onus lay upon him to establish the same. From the pleadings of the two sides, it stands duly established that the property in question which is a small dwelling unit was allotted by the Rehabilitation Department through Tehsildar (Sales)-cum-Managing Officer, Faridabad, under the Jan Kalyan Yojna vide letter No.1267 dated 14.08.1986. One of the riders upon this allotment is that the property in question could never be alienated in any manner for a period of 10 years from the date of the allotment and remained in operation till 1996/97. It is claimed by the plaintiff that on the strength of agreement to sell dated 19.06.2004 he has purchased the property in question. It needs to be reiterated here that an agreement to sell does not confers title and, therefore, the claim as to the ownership so laid by the plaintiff does not materializes when there is nothing substantial proved on the record of so alleged transfer of ownership. More so, a mere payment of house tax does not confers title on a person and it is purely payment of the local municipal taxes though on behalf of the plaintiff innumerable documents have sought to be brought on record comprising of Voter Card (Ex.P-16), Ration Card (Ex.P-17) but they do not confer any title much less proof of this alienation

by the original allottee to the plaintiff.

It is by no means denied that the original allottee-Amar Singh s/o Mohan Singh has died and that defendant No.1-Balvinder Kaur @ Bindri happens to be his widow and, therefore, in the absence of any other evidence being the widow is certainly entitled to inherit the estate of her deceased husband. The learned First Appellate Court in the impugned findings has rightly concluded that from the oral as well as documentary evidence, nothing is substantiated as to the possession of the plaintiff over the property in dispute. It is further concluded by the Court below that the house tax receipt produced by the plaintiff pertain to some other property and not the one in question and more so, especially, in light of the irrefutable findings that since no sales certificate was issued in favour of Amar Singh, he was yet to become a full fledged owner on the basis of this allotment letter and, therefore, question of further alienation by him does not materialize by any means and, therefore, even claim of one-Mahender Singh is of no consequence. Much stress has sought to be laid by the Court below in para 30 onwards in the impugned findings and which could not be displaced during the course of arguments on behalf

of the appellant. This Court upon perusal of the records does not find any fault in the findings of the Court below and, therefore, the same needs to be upheld.

The appeal of the appellant being meritless stands dismissed.

21.03.2022
Neha

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No