

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.222 of 2021(O&M)
Date of Order: 07.05.2022

Ravinder Gupta

..Appellant

Versus

Ashok Kumar Garg and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

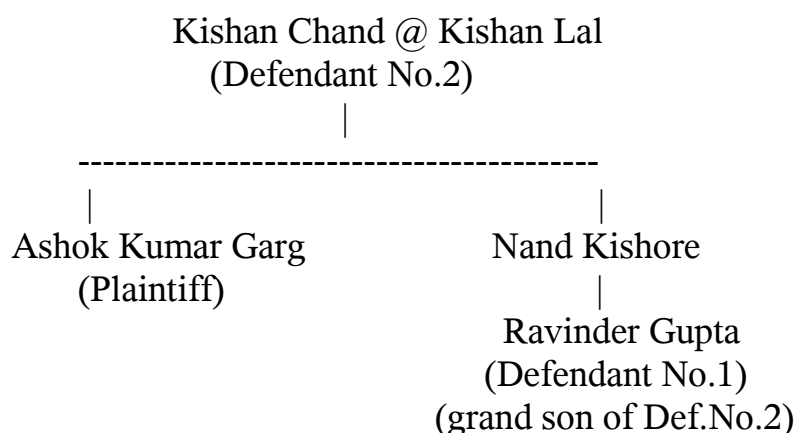
Present: Mr. Shailendra Jain, Sr. Advocate, with
Mr. Vikrant Rana, Advocate and
Mr. Jagtar Singh, Advocate,
for the appellant.

Mr. C.B.Goel, Advocate, with
Mr. Rajinder Goel, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

While assailing the correctness of the judgment and decree passed on 10.02.2020, by the learned First Appellate Court, defendant no.1 has filed this Regular Second Appeal.

The parties to the litigation are closely related. A small pedigree table would facilitate understanding of inter-se relationship between the parties.



The plaintiff-Sh. shok Kumar Garg filed a suit for declaration claiming that he is the owner of Shop/Booth No.36 and the sale deed

executed by Sh. Kishan Chand in favour of Ravinder Gupta on 20.10.2010, is not binding on his rights. Sh. Ashok Kumar Garg claims that he purchased the allotment rights from the allottee Sh. Tunia Ram (son of Sh. Ram Parsad) in the year 1976. Thereafter, the shop/booth was transferred in his name and he continued with the business for quite some time. He also claims that in the Municipal record, the property was transferred in his name and he continued to pay house tax till the year 1993-1994. He further claims that he came to know from reliable sources that a stranger has taken electricity connection with regard to the property in dispute. The plaintiff, after serving notice on the defendants, filed a suit for grant of decree of declaration.

The defendants contested the suit while asserting that Sh. Kishan Chand, their grand father was the owner of the property who has sold the sale to defendant no.1 vide sale deed dated 20.10.2010.

The plaintiff, in order to prove his case, examined PW4-Sh. Shiv Shankar, Clerk, in the office of Municipal Committee, Dadri. In fact, the Dadri Town Improvement Trust is being managed by the Municipal Committee, Dadri. He brought the original record. He proved that on the application of Sh. Tunia Ram (son of Sh. Ram Parsad), booth no.36 was allotted to him. The application submitted by Sh. Tunia Ram was exhibited as Ex.P8. He also proved an application submitted by the plaintiff-Sh. Ashok Kumar Garg with a request to transfer the shop/booth in his name on 04.07.1978, which was exhibited as Ex.P9. On this very application, there is an endorsement by the clerk of the Improvement Trust to the effect that Sh. Tunia Ram son of Sh. Ram Parsad has sold the property to Sh. Ashok Kumar Garg (son of Sh. Kishan Lal) and the report is submitted to the

Chairman. The aforesaid endorsement is Ex.P10. The Chairman of the Improvement Trust, on the application itself, has passed an order on 07.02.1978, permitting transfer of the property in favour of Sh. Ashok Kumar Garg. The same is Ex.P11. He also produced and proved miscellaneous demand and collection register maintained by the Town Improvement Trust, Dadri. As per the aforesaid register, the shop/booth was allotted to Sh. Tunia Ram son of Sh. Ram Parsad for Rs.5000 and the price consideration for the shop was paid in the following manner:-

1.	11.02.1976	Rs.1000/-
2.	06.08.1976	Rs.1200/-
3.	26.10.1976	Rs.1014/-
4.	08.07.1977	Rs.339/-
5.	16.01.1978	Rs.1006/-
6.	02.05.1984	Rs.519.35/-
7.	13.08.2012	Rs.5250/-

He also exhibited an application filed by the wife of Sh. Nand Kishore under the Right to Information Act, 2005, Ex.P13. He also proved the communication sent in response to the information sought under the Right to Information Act, 2005, Ex.P14, stating that Booth No.36 was initially allotted to Sh. Tunia Ram which has been transferred in favour of Sh. Ashok Kumar Garg, the plaintiff. The payment of Rs.5250/- vide receipt dated 13.08.2012 for Booth No.36 was proved as Ex.P15. Ex.P16 is a certificate issued by the Town Improvement Trust, Charkhi Dadri to the effect that the property was allotted to Sh. Tunia Ram (son of Sh. Ram Parsad) for Rs.5000/- which was subsequently transferred in favour of Sh.

Ashok Kumar Garg and the entire payment has been deposited in the

account of the Improvement Trust. It is also stated that the possession has been delivered to the purchaser.

On the other hand, the defendants, in order to prove his case, has produced assessment register Ex.DW4/A, showing an entry in favour of Sh. Kishan Chand @ Kishan Lal son of Sh. Devi Sahai at Sr. No.728. This is with respect to property located in Ward No.8, for the year 1989-1990. Defendant no.1 also produced a copy of the sale deed dated 20.10.2010.

Apart from the aforesaid documentary evidence, the oral evidence was produced.

The trial Court dismissed the suit, however, the learned First Appellate Court while allowing the application for additional evidence reversed the judgment and decree passed by the trial Court, resulting in decreeing the suit.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the judgments and decrees passed by the courts below and the record which was requisitioned.

The learned senior counsel representing the appellant has submitted that there is no allotment letter issued by the Improvement Trust in favour of Sh. Tunia Ram (son of Sh. Ram Parsad) or Sh. Ashok Kumar Garg, the plaintiff. He further submits that there is no document of ownership like the conveyance deed either in favour of Sh. Tunia Ram (son of Sh. Ram Parsad) or Sh. Ashok Kumar Garg, the plaintiff. He further submits that Sh. Kishan Chand alias Kishan Lal is recorded as owner in the Municipal record, who has thereafter, transferred the property in favour of defendant no.1 (the appellant herein). He also submits that Sh. Yudhvir Phogat (grand son of Sh. Sardar Singh), the then Chairman of the Trust has

appeared in evidence and submitted that the signatures on Ex.P11 and Ex.P16 do not belong to his grand father. He further submits that signature of Sh. Sardar Singh has not been proved on the various documents by Sh. Shiv Shankar, Clerk, because he never worked in the office with Sh. Sardar Singh. He further submits that the plaintiff has failed to disclose as to how defendant no.1 entered possession of the property.

The first argument of the learned counsel representing the appellant cannot be accepted because the plaintiff had produced overwhelming evidence to prove the allotment of the plot in favour of Sh. Tunia Ram. Ex.P8 is the application submitted by Sh. Tunia Ram in the year 1976. Along with it, Rs.1000/- was also deposited. Furthermore, on reading of Ex.P10, it is evident that the official of the Improvement Trust submitted a report that Sh. Tunia Ram was allotted booth no.36 on 11.02.1976. Further, the Chairman of the Improvement Trust approved the transfer in favour of Sh. Ashok Kumar Garg vide Ex.P11. The Miscellaneous and Collection Register Ex.P12 also proves allotment in favour of Sh. Tunia Ram. It also acknowledges the transfer in favour of Sh. Ashok Kumar Garg. In response to the information under the Right to Information Act, 2005, the Administrator of the Improvement Trust vide communicated dated 02.08.2012, confirmed that the booth no.36 was allotted to Sh. Tunia Ram which has now been transferred in favour of Sh. Ashok Kumar Garg. Ex.P15 is a receipt of payment of Rs.5250/- from Sh. Ashok Kumar Garg by the Improvement Trust with respect to booth no.36. Ex.P16 is again a certificate issued by the Chairman of the Improvement Trust acknowledging that Sh. Tunia Ram was allotted booth No.36, which was subsequently transferred in favour of Sh. Ashok Kumar Garg.

In these circumstances, the first argument of the learned counsel cannot be accepted.

The next argument of the learned counsel with respect to Ex.DW4/A, the assessment register of the Municipal Committee, Charkhi Dadri, to prove the ownership of Sh. Kishan Chand @ Kishan Lal, has no substance. The assessment register is only for the purpose of assessing the municipal tax. The appellant was required to prove ownership/title of Sh. Kishan Chand @ Kishan Lal, his grand father. He failed to produce any evidence to prove his title.

The next argument of the learned counsel representing the appellant is with reference to the deposition of Sh. Yudhvir Phogat (grand son of Sh. Sardar Singh). On a careful reading of the deposition, it is evident that he admitted signatures of Sh. Sardar Singh on Ex.P11, except the alphabet 'S'. However, he has stated that he identifies the signature of his grand father. Late Sh. Sardar Singh was the Chairman of the Improvement Trust. He discharged his official duties in accordance with law. In the considered opinion of the Court, such deposition cannot be preferred in place of official record, particularly when in cross-examination, he admits the signatures on Ex.P11.

The last argument of the learned counsel is with regard to failure on the part of the respondent to prove the signatures of late Sh. Sardar Singh. At the cost of repetition, it may be noted that late Sh. Sardar Singh was Chairman of the Improvement Trust. He signed various documents in discharge of his responsibilities. It is a wholly Government owned trust. The official record from the Improvement Trust has been produced. Sh. Shiv Shankar, Clerk from the office of Municipal Committee, Charkhi Dadri,

which manages the Improvement Trust had produced the original record and has stated that the certified copies, which form a part of the record, are in accordance with the original. Such official record is not required to be further proved by examining any witness, who had seen the former Chairman signing the document. Once it was a part of official record, it carries the presumption of correctness/genuineness.

Hence, the argument of the learned counsel that the plaintiff failed to prove his allotment, is without any basis.

Consequently, finding no merit, the appeal is dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

May 07, 2022

nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No