

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: 09-11-2022

1.

Regular Second Appeal No.4755 of 2019 (O & M)

Ghaniya Lal

..... APPELLANT(S)

VERSUS

Neetu & others

..... RESPONDENT(S)

...

2.

Regular Second Appeal No.4590 of 2019 (O & M)

Gopi @ Bobby Kumar

..... APPELLANT(S)

VERSUS

Neetu & others

..... RESPONDENT(S)

...

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

...

PRESENT: - Mr. Bikramjit Aroura, Advocate, for the appellants.

. . .

Tribhuvan Dahiya, J (Oral)

CM No.13540-C of 2019 in RSA No.4755 of 2019

Delay in refiling is condoned.

Application is allowed.

Main Case

The aforesaid two appeals are being decided together since they pertain to two civil suits filed by two sons of Shingara Ram *alias* Piara Ram with respect to the same property, against the same

respondents/defendants claiming similar relief. Both the Courts below have decided the suit as well as the appeal by two separate but similar judgments. The facts for deciding the appeals are being taken from RSA No.4755 of 2019.

2. The appellant-plaintiff (hereinafter referred to as, 'plaintiff') filed a suit seeking declaration that conveyance deed dated 04.03.1968 executed in favour of respondent-defendant No.3/ Jagjit Singh, and subsequent power of attorneys executed by him, dated 23.09.2005, in favour of respondent-defendant Nos.4 and 5 (Rozi and Kewal Kumar, respectively), and another one executed in favour of respondent-defendant Nos.6 and 7 (Narinder Kumar and Sikandar Lahir, respectively), dated 23.12.2011, are illegal, null and void. Further, a declaration was also sought that sale deed dated 26.03.2013 executed by respondent-defendant No.3 through defendant Nos.4 to 6 in favour of respondent-defendant No.1, and subsequent sale deed dated 26.09.2012 executed by respondent-defendant No.3 through defendant Nos.4, 5 and 7 in favour of defendant No.2, are sham transactions, illegal, null and void, and that plaintiff has become owner of the property by way of adverse possession.

3. The suit was contested by the defendants by pleading that the plaintiff was tenant in the disputed premises under defendant No.3, who transferred his right, title and interest in the property in favour of defendant Nos.1 and 2. The said property was evacuee property which was purchased by defendant No.3 through conveyance deed dated 04.03.1968. Defendant Nos.1 and 2 purchased the said property from defendant No.3 by registered sale deeds dated 26.03.2013 and 26.09.2012. Ever since, defendant Nos.1 and 2 became owner as well as landlord of the property having been

purchased by them by way of duly registered sale deeds and power of attorneys. Defendant No.3 also appeared and averred that he was owner of the suit property, vide conveyance deed dated 04.03.1968, executed by Managing Officer Sales, Jalandhar. He further stated that he had transferred his rights to defendant Nos.4 and 5 for the consideration received.

4. On the basis of the pleadings, the trial Court settled the following issues:

1. Whether the plaintiff is entitled for the relief of declaration as prayed for? OPP
2. Whether the plaintiff is entitled for consequential relief of permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not legally maintainable? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the plaintiff has no cause of action to file the present suit? OPD
6. Whether the plaintiff has concealed the material facts from the Court? OPD
7. Whether the suit of the plaintiff is not property valued for the purpose of court fee and jurisdiction? OPD
8. Whether the suit of the plaintiff is barred by limitation? OPD
9. Relief.

5. Both the parties led their evidence before the trial Court. On consideration of the same, the trial Court dismissed the suit filed by the

plaintiff vide judgment and decree dated 26.04.2018. The same was affirmed by the lower appellate Court vide judgment and decree dated 04.05.2019.

6. Learned counsel for the appellants-plaintiffs has been heard and paper book perused.

7. Learned counsel has contended that the plaintiffs are in possession of the property in dispute since the time of their grand-father, and have, therefore, become owners by way of adverse possession. Courts below wrongly held that plea of adverse possession could not have been taken by the plaintiffs. The finding has been recorded on the basis that no person can seek declaration of having acquired ownership of a property by adverse possession. This is contrary to law laid down by the Supreme Court in *Ravinder Kaur Grewal and Ors. Vs. Manjit Kaur and Ors.*, (2019) 8 SCC 729. It has further been contended that conveyance deed, dated 04.03.1968, executed by the Government agency in favour of defendant No.3 with respect to the property in dispute was not valid, and no title could have been transferred on that basis. Defendant no.3 was not even examined as witness. It is further argued by the learned counsel that an ejectment petition with respect to the suit property filed by defendant No.3, against plaintiff Kanhaya Lal (Ghaniya Lal) was dismissed by the Rent Controller vide judgment dated 22.09.2017 (Annexure-A/1). This establishes plaintiff's possession over the suit property, and also that defendant No.3 is not the owner thereof.

8. A perusal of the judgments of the Courts below shows the plaintiffs could not establish that conveyance deed, dated 04.03.1968 (Exh.D1), was illegal, null and void. Instead, execution of the same has been duly proved on record by examining DW-5, Raja Deepak Singh, AHRC,

Office of Deputy Commissioner. Mere non-examination of defendant No.3, in whose favour the conveyance deed was executed, cannot further the plaintiffs' cause in these circumstances. Besides, after execution of the deed in favour of defendant No.3, the latter sold the property to defendant Nos.1 and 2. The conveyance deed was never challenged by the plaintiffs except by filing the instant suit, and that too without impleading the said agency/executant of the deed. In this situation, no challenge to the deed can be laid and that too after more than 46 years of its execution. Still further, the plaintiffs are 3rd party to the conveyance deed as well as the subsequently executed sale deeds. They have, therefore, no right to challenge the same. The plaintiffs' plea to challenge the power of attorneys and sale deeds in question by alleging the same to be forged and fabricated cannot be accepted, as the alleged forgery has not even been pleaded. Therefore, they have no *locus standi* to challenge the same. The findings of the Courts below in that regard are valid and cannot be disturbed.

9. Reliance placed by the learned counsel on the judgment of the Supreme Court in *Ravinder Kaur Grewal case (supra)* to impugn the findings on in-admissibility of the plea of adverse possession, is misplaced. The law laid down that plea of acquisition of title by adverse possession can be taken by the plaintiff, has no application to the facts of the instant case. For the plea of adverse possession to succeed, it has to be established on record by way of evidence that the possession was actual, continuous and hostile to the knowledge of true owner, whose ownership of the property must be admitted. But the plaintiffs have denied defendants' ownership over the suit property. The suit has been filed seeking a declaration that conveyance deed in favour of defendant no.3, dated 04.03.1968, as well as

the subsequent sale deeds in favour of defendant Nos.1 and 2 are sham transactions, null and void; and the defendants do not become owners of the property on that basis. Therefore, the plea of adverse possession cannot be taken by the plaintiffs. Law to that effect stands settled by the Supreme Court, and a reference can be made to its judgment *Dagadabhai (Dead) by LRs v. Abbas @ Gulab Rustam Pinjari*, (2017) 13 SCC 705; the ratio is reflected in paragraphs 21 to 23 of the judgment which read as under:

21. In our considered opinion, these observations of the High Court are against the law of adverse possession. It is a settled principle of law of adverse possession that the person, who claims title over the property on the strength of adverse possession and thereby wants the Court to divest the true owner of his ownership rights over such property, is required to prove his case only against the true owner of the property. It is equally well-settled that such person must necessarily first admit the ownership of the true owner over the property to the knowledge of the true owner and secondly, the true owner has to be made a party to the suit to enable the Court to decide the plea of adverse possession between the two rival claimants.

22. It is only thereafter and subject to proving other material conditions with the aid of adequate evidence on the issue of actual, peaceful, and

uninterrupted continuous possession of the person over the suit property for more than 12 years to the exclusion of true owner with the element of hostility in asserting the rights of ownership to the knowledge of the true owner, a case of adverse possession can be held to be made out which, in turn, results in depriving the true owner of his ownership rights in the property and vests ownership rights of the property in the person who claims it.

23. In this case, we find that the defendant did not admit the plaintiff's ownership over the suit land and, therefore, the issue of adverse possession, in our opinion, could not have been tried successfully at the instance of the defendant as against the plaintiff....

10. The reliance placed by learned counsel on the judgment of the Rent Controller, dated 22.09.2017 (A-1) is also misplaced. The judgment has been rendered in an ejectment application filed by respondent-defendant No.3. It was dismissed on the ground that the applicant failed to establish the alleged tenancy, the issue of non-payment of rent, etc. Rent Controller has held that he does not have the power to adjudicate upon the question of title over the property in dispute. Therefore, there is no reason for the plaintiffs to refer to or rely upon the judgment, it has no bearing on the issues being adjudicated. Besides, the said judgment was not placed on record of the

Courts below, for obvious reasons that it could not have advanced the plaintiffs' case in any manner.

11. In view of the aforesaid, there is no ground to interfere with the concurrent findings recorded by the Courts below. No substantial question of law arises for consideration.

12. Dismissed.

13. Since the appeals stand decided, all pending applications, if any, are disposed of as having been rendered infructuous.

(Tribhuvan Dahiya)
Judge

09-11-2022

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Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No