

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

101

**RSA-1244-2011 (O&M)
Date of decision: 12.09.2022**

OM PARKASH

....Appellant

Versus

OM PARKASH AND ORS

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sanjiv Gupta, Advocate
for the appellant.

Mr. M.L. Sarin, Sr. Advocate with
Mr. Ritesh Aggarwal, Advocate
for the respondents.

MANJARI NEHRU KAUL. J. (ORAL)

The suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 15.09.2007. The appeal preferred by the plaintiff also met the same fate and was dismissed by the Appellate Court vide its decision dated 06.09.2010. The plaintiff is now before this Court in Regular Second Appeal. (The parties to the *lis* shall hereinafter be referred to by their original positions before the trial Court.)

The case of the plaintiff in brief may be noticed as thus:-

It was averred that Johri S/o Har Chand Rai was the ancestor of the plaintiff and owner in possession of the suit property as detailed in Para 1 of the plaint. Defendant No.2 after colluding with defendant No.1 and by asserting herself to be the owner, sold the disputed property vide sale deed No.471 dated 16.06.1990 in favour of defendant No.1.

It was pleaded that Johri died in the year 1952 at Kanpur. Prior to the year 1956, females and daughters had no right on the ancestral property, hence, defendant No.2 also had no right in the suit property. Still further, it was averred that in the circumstances, defendant No.2 had no right and interest in the suit property and sale deed No.471 was thus a void transaction not binding on the plaintiff and the proforma defendants. It was also pleaded that it was just 02 months prior to the institution of the suit in question that the plaintiff, on his return to Mohindergarh, had learnt that defendant No.1 was claiming the disputed property. Left with no other option as the defendant No.1 had refused to admit the genuine claim of the plaintiff, the suit in question was filed for decree of declaration to the effect that the plaintiff along with the proforma defendants were owner in possession of the property in dispute and were also entitled for rectification of ownership record and sale deed No.471 being wrong, illegal, null and void was liable to be set aside.

Defendants controverted the pleaded case of the plaintiff by making the following submissions:-

- (i) That Johri and other persons in the pedigree table submitted by plaintiff had no concern with the suit property as they had never resided in Mohindergarh;
- (ii) That defendant No.2-Bimla Devi was the exclusive owner in possession of the suit property;
- (iii) That defendant No.2-Bimla Devi had been living openly as exclusive owner of the disputed property for more than 25-30 years, a fact which was known to the parties to the suit and other persons;
- (iv) That the suit property had been purchased by defendant No.1 from

defendant No.2 vide sale deed No.471 for a sale consideration of Rs.1 lakh, and ever since then defendant No.1 had been owner in possession of the suit property;

(v) That after purchase of the suit property, defendant No.1 had dedicated the courtyard of this property to Baba Shayam Ji Temple, wherein, the trustees of the temple had invested a huge amount of money for carrying out renovations including getting electric connection fittings within the building;

(vi) Lastly, the electricity connection had been in the name of the defendant for more than 4 to 5 years. Hence, suit of plaintiff was liable to be dismissed as he was barred by his own conduct.

On the basis of the material on record and other evidence led, both the Courts below dismissed the suit of the plaintiff with concurrent findings that plaintiff had failed to establish his title as owner of the property in question as no documentary evidence had been led by him in the said regard. Further, the plaintiff failed to lead any evidence to substantiate his plea that the sale deed No.471 dated 16.06.1990, executed by defendant No.2 in favour of defendant No.1, was a sham transaction and thus null and void.

Learned counsel for the appellant-plaintiff has vehemently argued that the impugned judgment and decree passed by the Courts below are against the evidence led on record inasmuch as the Courts below erred in dismissing the suit of the appellant even though he had proved his ownership over the property in dispute by producing Tax assessment register of the Municipal Committee Mohindergarh as Ex. PW2/A and Ex. CZ, wherein the name of the appellant and other co-sharers along with name of Johri Lal was clearly mentioned.

He vehemently argued that the claim of defendants that they are in possession of property in question is contradicted by the fact that the suit property had been in possession of Khadi Bhandar Mohindergarh, who was occupying the same as a tenant under the appellant. He invited the attention of this Court to Ex.CY whereby Satyavati wife of Banarshi Dass S/o Johri Lal had been given warrants of possessions qua the first floor of the suit property. It was further argued that the trial Court in a tearing hurry had closed the evidence of the appellant, as a result of which the appellant had filed an application for additional evidence to bring on record judgment of the Civil Court in a civil suit which established the plaintiff as proprietor of M/s Pawan Cloth House Mohindergarh, and to summon the officials of Khadi Bhandar to prove his ownership. However, the same had been dismissed by the Lower Appellate Court without appreciating that the documents sought to be placed on record were necessary for just and effective adjudication of the case.

Per contra, learned Senior counsel for the respondents controverted the submissions made by the counsel opposite by urging that the municipal records of tax assessment could not be taken to be documents of title. He submitted that defendant No.2 had been living on the suit property for 25-30 years and hence, the plaintiff was estopped by his own conduct to file the present suit. It was vehemently argued by the learned Senior counsel that defendant No.1 was the owner in possession of the suit property as the suit property had been purchased by defendant No.1 from defendant No.2 vide sale deed No.741 Ex. CX (Annexure P-5) and the said sale deed had been duly proved by testimony of DW1 and DW2. Learned Senior counsel vehemently argued that no rent note or any other proof of tenancy had been brought on record or produced by the plaintiff qua the tenancy of

Khadi Bhandar under the plaintiff-appellant. It was further argued that Ex. CY as pointed to by the learned counsel opposite could not be relied upon as the parties to the suit in question were not even parties in the suit mentioned in Ex. CY. In support of his submissions, learned Senior counsel relied upon *Deity Pattabhiramaswamy Vs. S. Hanyamayya and others, AIR 1959 SC 57; Thiagarajan and others Vs. Sri Venugopalaswamy B. Koil and other, (2004) 5 SCC 762; Prem Lata Vs. Bhupinder Singh, 2004 (4) RCR (Civil) 501 and Punjab Urban Planning & Development Authority Vs. Shiv Saraswati Iron & Steel Re-Rollings Mills, (1998) 4 SCC 539.*

I have heard learned counsel for the parties and perused the relevant material on record.

At the outset, it is pertinent to note that no cogent evidence to prove the ownership of Johri Lal qua the suit property was led before the trial Court. Though the appellant claimed to have inherited the suit property belonging to Johri Lal after his death, however, strangely, the death certificate of Johri Lal bears no date and does not have the signatures/stamp of the issuing authority.

In order to prove his title, a great deal of reliance was placed by the appellants upon Ex.PW-2/A and Ex. CZ i.e., the municipal record entries, however, it needs to be emphasized that the municipal record of assessment of tax are not documents of title for proving ownership over a property. Moreover, a perusal of the material on record is indicative of the fact that these documents were seemingly fabricated. The appellant in his cross-examination admitted that appellant or the proforma defendants had no documents of ownership qua the *haveli* and although he admitted that a rent note was executed when the suit property was given on rent to Khadi Bhandar, however, no such rent note was

produced in evidence. The trial Court had thus rightly drawn an adverse inference against the appellant for withholding the best evidence.

Before proceeding further, it is necessary to note that as per settled law, presumption of validity is attached to a registered document and in absence of evidence to rebut it, the same can be duly relied upon. Though it has been argued by the learned counsel for the appellant that sale deed No.471 is void and illegal, no evidence has been led to prove the same. The above-mentioned sale deed is a registered document and still further, the case of the defendants stands admitted by PW2, as he deposed to the correctness of site plan PW2/B attached with sale deed No.471. In this light, the impugned sale deed stands duly proved and consequently the title of defendant No.1 was established.

Though learned counsel for the appellant has invited the attention of this Court to Ex.CY, however, reliance cannot be placed on the same as it arose out of a different suit, titled Bishan Lal Vs. Satyawati, and the parties in the above-mentioned suit were different from the parties in the present suit. Still further, even the properties mentioned in the former and latter suits are different.

As far as the plea of appellant regarding additional evidence is concerned, the Court below made no error while dismissing the same as the documents which the appellant had sought to place on record by way of additional evidence, could have been easily produced in time by the appellant in evidence before the trial Court had he exercised due diligence.

In view of the categoric admissions and failure on the part of the appellant to prove either the ownership or possession over the suit property, the findings of Courts below cannot be faulted with. Further, even the evidence in the form of municipal assessment record and death certificate of Johri Lal was highly

suspect in view of the patent infirmities and hence could not have provided any force to the case of the appellant.

On being pointedly asked, learned counsel has failed to bring to the notice of this Court any material on record from which it could be inferred that the conclusions drawn by both the Courts below were either contrary to the record or suffered from any material irregularity. In the circumstances, no interference is warranted by this Court to set aside the impugned judgments and decree. The appeal being hopelessly devoid of any merit, stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

September 12, 2022

S.Sharma(syr)

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