

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

113

RSA No.1290-2020

Date of Decision: 27.07.2023

SATISH KUMAR GARG AND ANR

....Appellants

Versus

VASUDEV

...Respondent

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Abhilaksh Grover, Advocate for the appellants.

SANJAY VASHISTH, J.(Oral)

1. Present regular second appeal has been filed by the appellants (defendants) against the concurrent findings recorded by the Courts below, whereby, suit for permanent injunction was decreed in favour of the plaintiff (respondent herein).

2. As per the facts pleaded in the plaint, plaintiff alongwith other co-sharers are joint owners in possession of the agricultural land comprised in *Khewat No.46, Khatoni No.53, Rect. No.13, Killa No.10(8-16), 11(6-18), 12(1-14), 19(6-13), 21(8-0), 22(7-2), Kita 6* measuring *39 Kanals 3 marlas* situated in the Revenue Estate of Village Kanuka Tehsil and District Rewari vide *Jamabandi* for the year 2001-2002.

3. The appellants (defendants herein) are owners in possession of *Khewat No.48, Khatoni No.55, Rect. No.14, Killa No.15/2/2 (1-17), 16/2 (8-0), 17/2(5-18), 23(8-0), 24(8-0), 25(8-0), Kita 6* measuring *39 Kanals 15 Marlas* its $\frac{1}{48}$ th share i.e. *17 Marlas* and *Khewat No.39, Khatoni no.46, Rect. No.13, Killa no.8/2/2(0-12),*

9/2/1(1-3), 9/2/3(2-0), *Kita 3* measuring 3 *kanals* 15 *Marlas* its 1/24th share and *Khewat No.45, Khatoni no.52, Rect no.14, Killa no.8(8-0), 9(8-0), 14/1 (7-18), Kita 3* measuring 23 *Kanals* 18 *Marlas* its 10/478th share i.e. 10 *Marlas*, total measuring 1 *Kanal* 10 *Marlas* situated in the revenue estate of Village Kanuka, Tehsil and Distt. Rewari vide sale deed bearing *vasika* no.1037 dated 23.08.2007. The defendants purchased the above said land from the plaintiff. However, the defendants are interfering in the peaceful possession of the plaintiff and making construction over land comprised in *khewat No.36, khatoni no.53* in the *Rect. no.13, Killa no.10* without any right title and interest to do so. Thus, it is pleaded in the plaint that in case, defendants succeed in their illegal act by interfering in the peaceful possession of the plaintiff and dispossessing them, irreparable loss would be suffered by them.

3. In the written statement, apart the preliminary objections, on merits, it is pleaded by the defendants that under the garb of selling the land in question, plaintiff extorted huge amount from the defendants and delivered the actual physical and peaceful possession of only 3 *Kanals* of land, just adjacent to the road comprised in *Killa No.10* of *Rect No.13*, to the defendants and since then, the defendants are in continued actual physical and peaceful possession of the land in question, which is in the notice and knowledge of the plaintiff and other co-owners. Some part of the land was pleaded to be acquired by the State Government. It is also pleaded in the written statement that

for total sale consideration of Rs.3,80,000/-(Three lacs, eighty thousand), 3 *Kanals* of the land was contracted to sell out by plaintiff-Vasudev on 28.06.2006. The said contract was infact in the shape of a receipt, which was duly witnessed by plaintiff's real brother, namely, Samunder Singh. Defendant No.2 was put in possession by receiving Rs.3,70,000 (Three lacs, seventy thousand) as token amount, while Rs.10,000/- (Ten thousand) was agreed to be paid at the time of Registration/transfer.

4. Defendant No.2 by way of counter claim pleaded that on 28.06.2006, out of the land comprised in *Khewat No.46*, as per *Jamabandi* for the year 2001-2002, plaintiff agreed to sell 3 *Kanals* of agricultural land just adjacent to the road in favour of the defendants for a total sale consideration of Rs.3,80,000/- and received Rs.3,70,000/-(Three lacs, seventy thousand) as earnest money against the receipt dated 28.06.2006.

5. Plaintiff separately filed reply to the said counter claim, denying the stand taken by the defendants.

6. Vide order dated 17.07.2014, trial Court framed total eight issues, which are reproduced hereunder:

'1. Whether the plaintiff/non counter claimant along with and other co- sharer is in the exclusive possession of Khewat no.46, Khatuni no.53, Rect. No.13, Killa no.10?OPP

2. Whether the defendants/counter claimant are causing interference in the peaceful possession of the plaintiff/non counter claim over the aforementioned property?OPD

3. Whether the plaintiff/non counter claimant is entitled for the relief of permanent injunction as prayed for?OPD

4. Whether the defendant/counter claimant are in actual physical and peaceful possession 3 kanals of land comprised in killa no.10, Rect.No.13 by way of sale agreement entered by plaintiff/non counter claimant?OPD

5. Whether the plaintiff/non counter claimant duly executed the agreement to sale dated 28.06.2006 in respect of 3 kanal of agricultural land with the defendants counter claimant?OPD

6. Whether the defendant/counter claimant was raised and is still ready and willing to perform his part of the agreement?OPD

7. Whether the defendant/counter claimant is entitled for the relief of possession by way of specific possession of agreement of sale dated 28.06.2006?OPD

8. Relief.

7. At the very outset, it is admitted by the appellants herein (defendants No.1 and 2) that the counter claim filed by the defendants was dismissed by way of a separate judgment and decree and no appeal was ever filed against the judgment and decree passed in counter claim pleaded by the defendants, thus, the judgment and decree passed by learned trial Court declining the counter claim of the defendants has attained finality. It would be worth noticing that as per counter claim, defendants pleaded their possession on a specific portion of the land falling in Khewat No.46.

8. During the proceedings of the trial of the suit, said receipt was proved on record as Ex.D2. While making the observations on the said receipt i.e. Ex.D2, which is only a receipt, onus was upon the defendants to prove that said receipt was executed in respect of suit property only. In paragraph No.21, there is specific finding by learned trial Court that **original payment receipt has**

never been filed on the record. Only one DDR-Ex.DB was produced on record with the purpose to highlight that the original receipt was lost.

9. Even, it is also held that never any application for leading secondary evidence was moved by the defendants, thus, on the record of the present case, the sole proof available with the defendants is payment receipt i.e.Ex.D2, which remains unproved as per the provisions of the Indian Evidence Act. Thus, defendants have utterly failed to prove the purchase of the property on a specific portion of the land falling in *Khewat No.46*.

10. While dealing with the issue of ownership and possession of the plaintiff, the Court after looking into the *Jamabandi* for the year 2001-2002, reached to the conclusion that plaintiff was owner in possession of the land alongwith the other share holders. There is no rebuttal evidence to the said revenue document, which carries presumption of truth. Thus, ownership and possession of the plaintiff is well proved on record.

11. After going through all the issues and relevant documents, mainly relied upon by both the sides, learned trial Court dismissed the counter claim, however, decreed the suit for permanent injunction filed by the plaintiff (respondent herein).

12. For the sake of repetition, it is relevant to notice that against the dismissal of the counter claim, no appeal was instituted by the defendants. However, appeal filed by defendants against the

findings recorded by the trial Court in regard to the share holding and possession, keeping in view of the entry in the *Jamabandi* for the year 2001-2002 (Ex. P1), was dismissed and judgment and decree was maintained. Relevant paragraph Nos.15, 16 of the said judgment are reproduced hereunder:

'15. I have perused the records available on the file carefully. In a suit for permanent injunction, court can not go into the question of title to the suit land. However, in the present case, the plaintiff has ascertained that he along with his co-sharers are lawful owners in possession of the land measuring 39 kanal 3 marla situated in the revenue estate of village Kanuka falling in khewat no.46 khatoni no.53, vide jamabandi for the year 2001-02. As far as the legal possession of plaintiff over the suit property i.e. khewat no.46 khatoni no.53, mustkil no.13 killa no.10 is concerned, the plaintiff has been fully able to prove his lawful possession over the suit property. The plaintiff has claimed his co-ownership in possession over the suit property and has filed on record jamabandi for the year 2001-02 Ex.P1. On perusal of the said jamabandi, it has been found that plaintiff Vashudev along with his co-sharers is co-owner in possession of property comprised in Mustatil no.13 killa no.10 of khewat no.46. No document has been filed by defendants in order to rebut the said jamabandi Ex.P1 wherein the plaintiff has been shown as co-owner in possession of the suit property. From the perusal of the jamabandi Ex.P1, the defendants are not shown either in column of possession or in column of ownership. Meaning thereby that the defendants-appellants are neither the owner nor in possession in mustkil no.13 kila no.10 of khewat no.46. As per jamabandi Ex.P1, the defendants are third persons with regard to the land falling under khewat no.46, whereas the plaintiff is co-sharer of the land falling in khewat no.46. The defendants have not led any evidence showing that they are in possession in khewat no.46. The contention of learned counsel for appellants-defendants that at the time of execution of receipt Ex.D2, the

plaintiff had handed over the possession of the land of 3 kanal in khewat no. 46 to defendants is not found any force because there is not a single document produced by the defendants which shows that the plaintiff ever handed over the possession of the land to the defendants in khewat no.46. I have perused the receipt Ex.D2 and in this receipt also, there is no recital regarding handing over the possession to the defendants. So, there is not an iota of evidence available on the file showing any possession or ownership of the defendants in khewat no.46. Now the law is well settled that every co-sharer has a right to protect his land from any third person. Therefore, the learned trial court has rightly restrained the defendants- appellants from interfering in the peaceful possession of the plaintiff and his co-sharers in the land falling in khewat no.46.

16. *The next arguments of learned counsel for appellants- defendants that the property in dispute has been purchased by them from plaintiff and in this regard, an oral agreement to sell was executed between the parties on 28.6.2006 and a receipt Ex.D2 was also executed by the plaintiff. To prove their counter claim, the defendants have not led any cogent evidence in the court to prove any agreement to sell dated 28.6.2006. The defendants have not brought any oral as well as appeal documentary evidence in the court showing that the plaintiff executed any agreement to sell his 3 kanal land falling in khewat no.46 to defendants on 28.6.2006. Admittedly, there is no written agreement to sell dated 28.6.2006. The defendants only produced one photocopy of the receipt and claimed that the plaintiff agreed to sell his 3 kanal land on 28.6.2006 vide an oral agreement to sell and received 3,70,000/- in lieu of that agreement to sell. On the other hand, the plaintiff in his written statement as well as in evidence, has stated that the plaintiff executed this receipt on 28.6.2006 in lieu of land of 1 kanal 10 marla sold by him to the defendants P-2 W vide sale deed Ex. and this receipt does not pertain to any other agreement to sell with the defendants. I have perused the alleged receipt Ex.D2 produced by the defendants. Admittedly, this receipt is only a photocopy. It is also admitted fact that to prove this receipt, the defendants neither produced original receipt nor took*

the permission from the court to lead secondary evidence to prove the photocopy of receipt. From the perusal of receipt Ex.D2, it reveals that there is one attesting witness of this receipt namely Samunder Singh, but the defendants have not produced that Samunder Singh to prove the execution of the receipt Ex.D2. Except the photocopy of receipt Ex.D2, there is not an iota of evidence available on the file showing that the plaintiff ever executed any oral agreement to sell with the defendants to sell his 3 kanal of land falling in khewat no.46. There is no recital regarding the khewat number and khatoni number of the alleged land which was sold to the defendants in receipt Ex.D2. Now the law is well settled that sale agreement, general power of attorney etc. do not convey any title nor create any interest in an immovable property and immovable property can be legally and lawfully travelled by a registered deed of conveyance. Therefore, on perusal of the entire evidence led by both the parties, this court is of the considered opinion that appellants- defendants have failed to rebut the case of the respondent-plaintiff. The appellants-defendants have not placed on record the original payment of receipt.'

13. Apart the aforementioned submissions, learned counsel for the appellants has not addressed any other specific arguments to enable this Court to find out any fault in the challenged judgment and decree passed by the Courts below. Even, no specific law point has been raised by the appellant. Accordingly, impugned judgment and decree are **hereby maintained**.

14. Regular Second Appeal stands dismissed.

[SANJAY VASHISTH]
JUDGE

July 27, 2023
rashmi

Whether speaking/reasoned	Yes/no
Whether reportable?	Yes/no