

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

CM-7038-C-2022 in/and RSA-310-2019

Date of Decision: July 13, 2023

GURNAM SINGH

..... Appellant

Versus

SUKHWINDER PERHAR AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Jagjit Singh, Advocate for applicant-appellant.

HARKESH MANUJA, J. (ORAL)

CM-7038-C-2022

This is an application for bringing on record the legal heirs of appellant who has unfortunately died on 01.08.2021.

For the reasons mentioned in the application, the same is allowed and the legal heir of deceased-Gurnam Singh-appellant as mentioned in paragraph 2 of application is ordered to be impleaded as LR.

Amended memo be taken on record.

MAIN CASE

1. By way of present appeal, challenge has been laid to judgments and decrees dated 20.02.2016 passed by the Court of Civil Junior Division as well as 20.07.2018 passed by the Ld. Addl. District Judge, Chandigarh whereby suit for declaration as well as mandatory injunction filed at the instance of appellant-plaintiff stands dismissed.

2. Briefly stating the appellant-plaintiff filed a suit for declaration as well as mandatory injunction as regards house No.1214/1, EWS Category, Sector 40-B, Chandigarh stating himself to be an allottee from Chandigarh Housing Board vide letter dated

18.09.1981. It was further pleaded that a registered Power of Attorney dated 03.04.1986 was executed in favour of defendants No.1 and 2 followed by delivery of possession in their favour on account of certain difficulty being faced by the appellant-plaintiff as he needed to visit Amritsar to see his brother who got himself injured in some accident. It was also pleaded that defendants No.1 and 2 handed over possession to defendant No.3 without consent, however, in the year 2007, the aforementioned documents were got cancelled followed by filing of present suit.

3. On the other hand, despite notice, respondents No.1 and 2 chose not to appear and thus were proceeded against ex parte. Respondent /defendant No.3 contested the suit by filing written statement claiming himself to be in a settled possession of the suit property based on aforementioned registered Power of Attorney dated 03.04.1986 followed by certain documents obtained from defendants No.1 and 2. The factum of cancellation of aforementioned documents was specifically denied. In the alternate, defendant No.3 also raised plea of ownership by way of adverse possession.

4. The trial Court vide its judgment and decree dated 20.02.2016 dismissed the suit filed by appellant-plaintiff, besides having non-suited the respondent/defendant No.3 on his plea of adverse possession.

5. Aggrieved thereof, appellant-plaintiff filed First Appeal whereas respondent/defendant No.3 also filed cross-objections as

regards the findings qua issue No.5-A relating to adverse possession. The First Appellate Court vide its judgment and decree dated 20.07.2018 dismissed both, i.e. the appeal as well as the cross-objections.

6. While assailing the findings recorded by Courts below, learned counsel for the appellant vehemently submits that even as per the terms of letter of allotment dated 18.09.1981, the appellant-plaintiff could not have transferred his rights thereof for a period of 10 years and thus Power of Attorney or any other document executed in favour of defendants No.1 and 2 in the year 1986, while delivering possession of suit property had no meaning in the eyes of law. He further submits that it is the appellant-plaintiff who still finds mention as an allottee in the records of the Chandigarh Housing Board and thus the Courts below wrongly non-suited him.

7. I have heard learned counsel for the appellant and gone through the paper-book. I am unable to find substance in the submissions made on behalf of the appellant.

8. In the present case, ample evidence has been produced and proved on record that the appellant-plaintiff delivered possession of the suit property in favour of defendants No.1 and 2 way back in the year 1986 while executing Special Power of Attorney, Agreement to Sell, Will and Affidavit dated 03.04.1986 which form part of record as Ex.P-3 to Ex.P-5 and a perusal thereof show that the documents were executed and possession was handed over for all intents and purposes against consideration. From the record, it can also be made out that

even the remaining lease amount was also deposited by the respondents-defendants as the original receipts regarding the payment of instalments towards the lease document dated 18.09.1981 were all produced by defendant No.3 from his own custody as Ex.D-4 to Ex.D-30.

9. Besides it, the alleged cancellation of the documents of transfer of possession in the shape of Special Power of Attorney, Agreement to Sell, Will and Affidavit dated 03.04.1986 though against consideration was unilaterally done in the year 2001 and the same was not permissible in law in view of Section 202 of Indian Contract Act, 1872 as upheld by this Court in case of “**Jeet Kumar Vs. Girdharilal 2003(3) CCC-239**” as well as by Delhi High Court in case of “**Vimla Devi Vs. Pushpa Devi and Another 2017(241) DLI-568**”. Relevant Para 7 is reproduced hereunder:-

“7. In my opinion, the courts below have rightly held that the cancellation of the documents dated 11.2.1998 by the appellant/plaintiff by the documentation dated 6.4.1998 is of no legal effect. It is required to be noted that transfer of rights in an immovable property is by a contract i.e the same is a bilateral act, and such bilateral contract cannot be cancelled unilaterally i.e by unilateral cancellation of documents by which rights in immovable property are transferred by the transferor to the transferee. The courts below have also rightly placed reliance upon the Section 202 of the Indian Contract Act as also the judgment delivered by this Court in the case of Shri Ramesh Chand Vs. Suresh Chand and Anr., 188 (2012) DLT 538 and which holds that documents which are in accordance with the amended Section 53A of the Transfer of Property Act, 1882 and executed prior to 24.9.2001 when by Act 48 of 2001 Section 53A of the Transfer of Property Act was amended to require compulsory stamping and registration of an agreement to sell, then such documents prior to 24.9.2001 are valid documents because the amendment to Section 53A of the Transfer of Property Act is prospective in nature. Also, this aspect is clearly stated by the Supreme Court in the judgment in the case of Suraj Lamps

and Industries Pvt. Ltd. Vs. State of Haryana and Anr., 183 (2011) DLT 1 (SC) wherein the Supreme Court has held that those agreements to sell, power of attorneys and Wills, which are in accordance with Section 53A of the Transfer of Property Act, Section 202 of the Indian Contract Act and the relevant provisions of the Indian Succession Act, the same will continue to be valid i.e documents executed prior to 24.9.2001 being in accordance with the then existing Section 53A of the Transfer of Property Act which did not require stamping and registration of the agreement to sell would be valid documents. The courts below, in my opinion, have also rightly held that the fact that possession was given to the respondent no.1/defendant no. 1 by the appellant/plaintiff in terms of the documents dated 11.2.1998 shows that the appellant/plaintiff had received the entire sale consideration. I also adopt the other reasoning as given by the courts below showing that complete sale consideration has been duly received by the appellant/plaintiff.”

Moreover, the appellant-plaintiff even failed to prove the notice of cancellation produced on record as Ex.P-9.

10. Furthermore, one another aspect as regards the maintainability of suit for declaration and mandatory injunction somehow missed the consideration of the Courts below. In the present case admittedly, the possession of suit property was handed over in favour of defendants No.1 and 2 in the Year 1986, however, the suit for declaration and mandatory injunction came to be filed at the instance of appellant-plaintiff in the year 2011 and thus the prayer for mandatory injunction was clearly not maintainable as the appellant-plaintiff was required to file a suit for possession besides having prayed for declaration, within limitation.

11. In view of the above discussions and having perused the judgments and decrees passed by Courts below, I find that a concurrent

findings of fact have been recorded against the appellant-plaintiff and the submissions made on his behalf do not make out any question of law much less substantial question of law.

12. Thus, the present appeal being devoid of merits, is dismissed.

13.07.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>

