

Manoj Adhana

....Petitioner

versus

Beena Devi and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Vikram Singh, Advocate for the petitioner.

Mr. Kamal Deep Sehra, Advocate,
Ms. Meena, Advocate for respondent No.1.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 26.03.2021 (Annexure P-4) passed by learned Additional District Judge, Faridabad and order dated 16.03.2021 (Annexure P-3) passed by learned Civil Judge (Junior Division), Faridabad whereby application of petitioner-plaintiff under Order XXXIX Rules 1 & 2 of Code of Civil Procedure, 1908 (for short 'CPC') for restraining respondent-defendants from raising any construction or interfering into peaceful possession of plaintiff over suit property, was dismissed.

2. Impugned order dated 16.03.2021 (Annexure P-3) passed by learned trial Court is premised, *inter alia*, on the following reasoning:

"4. I have heard both the counsels and perused the record very carefully.

In order to allow the application under Order XXXIX Rule 1 and 2 of CPC, the plaintiff is required to show before the court three necessary points-

- Strong prima facie case;*
- Irreparable loss which cannot be compensated in terms of money; and*
- Balance of convenience.*

5. First of all, this court finds that the plaintiff has no prima facie case in its favour. The plaintiff has claimed relief of permanent injunction alleging himself to be owner in possession of plot

measuring 500. Sq Yards in Rect No. 68, Killa No. 16 (8-0) of revenue Estate of Village Uncha Gaon, Ballabgarh, Faridabad as per Jamabandi of the year 2005-06, Relinquishment deed and mutation No. 10362 dated 28.02.2007. Transfer deed dated 17.07.2020 of Tikaram son of Late Bahadur Singh son of Late Subedar Sumera shows that allegedly he relinquished his share in Rect No. 68//16 (8-0) and in other Rect in favour of plaintiff Manoj being his son. However, this relinquishment deed does not prove that plaintiff or his father was owner in possession of the suit property by itself. The whole claim of the plaintiff to refute the ownership and possession of the defendant no.1 is based upon that sale deed No. 1761 dated 26.05.1990 was not executed by ancestors of the plaintiff and also that it does not belong to the suit property and Ld. Counsel for the plaintiff submitted certified copy of the same wherein he show that Rect No. 71/16 (8-0) was actually sold out by Raj Gopal son of Sumera Ram to Sunehri Lal by way of that sale deed. Therefore, he argued that when Rect No. 68/16 (8-0) was never sold out to Sunehri Lal then the further mutations and sale deed in favour of the defendant no.1 by the defendant no.2 regarding plot in question upon Rect No. 68/16 is not a valid document.

6. On this, Ld. Counsel for the defendant produced photocopy of the original sale deed wherein Rect Number has been shown as 68/16 instead of 71/16 as shown in certified copy of the sale deed No. 1761 dated 26.05.1990. This was very interesting for the court also to note that at one place the photocopy of original sale deed shows Rect No. 68/16 but at the same time in certified copy show the Rect No. 71/16. Therefore, in order to remove any doubt, original sale deed was called from the possession of Electronica Finance Limited, Faridabad and record was also called from the Sub-Registrar regarding the sale deed. On 17.02.2021, the original sale deed was brought from the Deputy Manager from Electronics Finance Limited, Faridabad and on the same day, Shri Ajeet Singh, Clerk Sub-Registrar, Ballabgarh, Faridabad.

7. Perusal of the original sale deed shows that Rect No. 68/16 has been mentioned on it and not Rect No. 71/16 as has been shown in the certified copy as well as in the record of the Sub-Registrar. Again finding it to be very unique situation, the court tried to know from the Clerk of Sub-Registrar Office as to the procedure of registration of Sale deed. He suffered a statement to the effect that sale deed No. 1761/90 was registered on the presentation of Shri Raj Gopal. The same was got typed by document writer namely Nihal Singh Saini and two copies were written. It was also submitted that at the time of registration Fard Jamabandi as well as mutation number is being seen for the ownership of the land. Thereafter, the same has to be produced in the office of Sub Registrar and after checking by Sub-Registrar, he marked the same to the registry. Thereafter, the sale deed is to be registered. Thereafter, the Sub Registrar after checking the same sign it. Thereafter the original copy of the sale deed is returned and the carbon copy is used to be kept by Record Keeper serial wise.

8. From the above explained procedure, it is clear that at the time registration of sale deed of a land, first of all the ownership of the seller is checked through Jamabandi and mutation and if he is found to be owner, only then the sale deed is forwarded to the Sub-Registrar

for checking and registry. Now, to know the true facts of the case, this court called the concerned patwari along-with the records of the suit land i.e. Rect No. 68/16 as well as land pertaining to Rect No. 71/16 from the year 1980 till today. Halqa Patwari Shri Sehdev Singh appeared in the court today itself and produced the jamabandi for the year of 1980-81 to 2005- 06. Perusal of the Jamabandi clearly shows that Sumera Ram was one of the co-owner in possession of Rect No. 68/16 as per Jamabandi 1980-81 and he was not the owner of Rect No. 71/16 rather one Ranjeet Singh son of Subedar was owner of Rect No. 71/16 of Village Uncha Gaon, Ballabgarh, Faridabad. As per the Jamabandi 1985-86 again Sumera Ram was one of the owner in possession of the land Rect No. 68/16 which continues for the year 1990-91. However, Jamabandi of the year 1995-96 shows that there had been several sale deeds by the owners of Rect No. 68 in favour of other persons. Raj Gopal son of Sumera Ram was also co-sharer in this land. At the same time Raj Gopal was not owner of Rect No. 71/16 in any of the Jamabandi. At the time of arguments, Ld. Counsel for the defendant also produced one another copy of sale deed No. 1759 dated 26.05.1990 executed by Raj Gopal son of Sumera Ram in favour of some other person from land pertaining to Rect No.68/16, which shows that Raj Gopal was selling out plots from Rect No. 68/16 to different persons. In this manner, it is clear that at the time of presentation of the sale deed No. 1761 dated 26.05.1990, Raj Gopal son of Sumera Ram was co-owner in possession of land pertaining to Rect No. 68/16 (8- 0) and not of Rect No. 71/16 (8-0) Village Uncha Gaon, Ballabgarh, Faridabad. Hence, original sale deed rightly shows that Raj Gopal sold out his share to Sunehri Lal from Rect No. 68/16 measuring 500 Sq. Yards in the shape of a plot and the claim of the plaintiff that Raj Gopal sold land pertaining to Rect No. 71/16 is against the factual position. It seems that there was clerical mistake in the carbon copy of the sale deed No. 1761 dated 26.05.1990, due to which the certified copy of the sale deed show wrong description as Rect No. 71/16. This is also confirmed by mutation No. 9394 dated 31.12.2005 whereby name of Sunehri Lal was incorporated in place of Raj Gopal in the revenue record. After Sunehri Lal, the land in question was inherited by his family members vide mutation No. 18045, who later on relinquished their share in favour of Dharmender i.e. defendant no.2 vide relinquishment deed No. 8445 dated 15.11.2013 and mutation No. 20242 dated 15.5.2015 was sanctioned. Defendant no.2 thereafter sold the land in question to defendant no.1 vide sale deed No. 9368 dated 22.1.2020 and consequent mutation No. 28420 dated 12.3.2020 was sanctioned in favour of defendant no.1.

9. In this manner, prima facie defendant no.1 is owner in possession of the suit land and the claim of the plaintiff is found to be false. The defendant no.1 being owner in possession of plot measuring 500 Sq. yard in Rect No. 68/16 is entitled to construct the same.

10. Hence, plaintiff fails to prove any prima facie case in his favour and therefore, application is dismissed.

11. Nothing in this order shall be construed as my observations on the merits of the case.”

3. Aggrieved plaintiff-petitioner, preferred an appeal before First Appellate Authority, which was dismissed vide order dated 26.03.2021.

4. Having heard the arguments of learned counsel for the parties, I find no room for interference in the aforesaid valid reasons recorded by the learned Courts below.

5. No material irregularity in law or procedure has been committed by the learned Courts below, so as to exercise extraordinary revisional jurisdiction herein.

6. Apart therefrom, it transpires that learned trial Court, in order to ascertain *prima facie* case, being conscious that original sale-deed was not produced and merely a carbon copy was produced and therefore, there could have been a human error in carbon copy being either not legible or a wrong revenue entry having been recorded, had summoned the relevant original sale deed and the revenue records from the concerned officials. It was only after going through the same that the learned trial Court found the same as supporting the defendants' version and hence the plaintiff was not accorded any interim protection, as was being sought.

7. Be that as it may, without recording any findings *qua* merits of the case, revision petition is disposed of with observations that in case eventually it is found that construction in question has been raised on an area which falls under the ownership of plaintiff-petitioner, defendants shall have to restore that area to the original position, within a period of 2 months, without making plaintiff to institute any further proceedings *qua* the same, apart from paying damages to the tune of Rs.1 lakh to plaintiff-petitioner on conclusion of trial.

8. Furthermore, construction being carried out shall be at the sole risk and costs of respondent No.1 and she shall not claim any special equity that during

pendency of trial she was allowed to construct, therefore, she is entitled to keep the said construction.

- 9. Disposed of with aforesaid observations.
- 10. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 27, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No