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

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**RSA-3644-2019 (O&M)
Decided on : 07.12.2023**

Mamraj (since deceased) through
his LRs and Ors.

... Appellant(s)

Versus

Mehar Chand and Ors.

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Shiv S. Modgil, Advocate and
Mr. Rahul Vohra, Advocate for
Mr. Aditya Jain, Advocate, for the appellant(s).

SANJAY VASHISTH, J. (Oral)

CM-9954-C-2019

Allowed as prayed for.

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i. This is an application filed under Chapter-I, Part-C Rule 2 of High Court Rules and Orders Vol.-5 read with Order 22 Rule 3 of CPC for impleading/bringing on record the legal representative of the appellant – Mamraj (plaintiff No.1).

ii. It has been averred in the application that during the pendency of litigation, Mamraj has expired, leaving behind his legal representative (sons) as mentioned in para No.2 of the application. It has further been averred that apart from those, there is no other legal representative of the deceased - Mamraj. The application is accompanied by the affidavit of Devender, who is son of the deceased/appellant - Mamraj.

iii. After hearing learned counsel for the applicants-appellants and perusing the application, which is supported by an affidavit, same is

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allowed, subject to all just exceptions and the applicants as mentioned in para No.2 of the application are ordered to be impleaded as legal representatives of deceased/appellant - Mamraj. It is, however, clarified that this order shall not confer any title upon the legal representative to the estate of the deceased – appellant and this order has been passed only to allow the aforesaid legal representatives to pursue this appeal.

iv. CM stands **disposed of**. Memo of parties is already appended with the appeal.

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1. Present Regular Second Appeal (RSA) has been filed by the plaintiffs against the concurrent findings of dismissal of suit.

2. Suit for possession was filed by the four children of one Shikari s/o Sh. Raghbir i.e.; three sons and one daughter. In the suit, it was prayed by the plaintiffs that a decree of possession of land measuring 0 Bigha 2 Biswa 3 Biswansi (Pukhta) i.e. 325 sq. Yards, fully detailed and described in para no.1 of the plaint, be passed in their favour.

3. Plaintiffs case is that their father – Shikari along with Surajmal and Balley sons of Sh. Raghbir were absolute owners of the land measuring 18 Biswa 17 Biswansi (Pukhta) to the extent of half share situated at revenue estate Bhankri, Tehsil and Distt. Faridabad, as per Jamabandi for the year 1986-87. During his lifetime, father of the plaintiffs namely; Shikari, had executed a GPA bearing No.597, dated 18.02.1985 in favour of defendant No.1 – Mehar Chand in respect of land measuring 11 Biswa pukhta i.e. 1 Bigha 13 Biswa Kham, forming part of Khewat No.83, Khatoni NO.104, Khasra No.240(1-1), 244(2-7), 244/1(2-16), 252(0-7) (for short 'suit land').

GPA holder – Mehar Chand, executed a lease-deed in respect of land

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measuring 15 Biswa 5 Biswansi kham, in favour of Shikari s/o Lekha, for 99 years on rent of Rs.100/- per year w.e.f. 28.03.1985 to 27.03.2084, vide registered deed no.5562, dated 28.03.1985.

Further, said GPA i.e. defendant No.1 also executed a sale-deed No.9843, dated 12.11.1987, in favour of Smt. Bhagwati Devi in respect of part of suit land measuring 5 Biswa 17 Biswansi and mutation of the same was sanctioned vide mutation No.835, dated 14.04.1988.

It was further pleaded therein that after the death of Shikari s/o Lekha, his son Dharambir executed the other lease deed bearing No.18652, dated 14.03.1990, of the land measuring 15 Biswa 5 Biswansi kham, in favour of Mehar Chand (GPA holder and defendant No.1) on the same terms & conditions, as that of lease-deed of Shikari, and mutation No.940, dated 24.09.1990, in respect of alleged lease-deed, was sanctioned in favour of Mehar Chand.

Also further, stated that father of the plaintiffs had expired on 31.10.1997. As the remaining land out of the suit land i.e. 2 Biswa and 3 Biswansi was left under the ownership of father of the plaintiffs along with its possession. After the death of father of plaintiffs namely; Shikari, mutation bearing No.152, dated 17.05.2007 was sanctioned in favour of plaintiffs, and defendants have illegally and unlawfully dispossessed the plaintiffs from the land, and took the possession over the land i.e. 2 Biswa & 3 Biswansi, in January 2008. This way, plaintiffs prayed that they are entitled to the possession on the remaining land i.e. 2 Biswa and 3 Biswani on the basis of revenue entries in their favour.

4. In the written statement filed by the defendants, it was stated that they are absolute owners in actual and physical possession of the suit

land measuring 1663 sq. Yards. It was also pleaded that by virtue of GPA dated 18.02.1985, a lease-deed for a period of 99 years was executed by defendant No.1 – Mehar Chand, on 28.03.1985 for the land measuring 15½ Biswa Kham i.e. 781 sq. Yards out of suit land measuring 1 Bigha 13 Biswa kham.

It was further pleaded in the written statement that defendant No.1 made a second transfer in favour of Smt. Bhagwati w/o Mehar Chand (defendant No.1), and this way, Bhagwati became owner in possession of land measuring 884.81 sq. Yards i.e. 17 Biswa and 10 Biswansi kham, out of the suit land.

Again said GPA/Defendant No.1 executed a registered sale-deed No.62, dated 04.04.1990 in favour of one Jagdish Lal, for the land measuring 475 sq. Yards.

Further pleaded that the land for which lease-deed was executed by Mehar Chand in favour of Shikari s/o Lekha, after his death, came to the name of his son Dharambir, and on 14.03.1990, Dharambir s/o Shikari s/o Lekha also executed Bay Hakook Patta in favour of defendant No.1 – Mehar Chand, for 781 sq. Yards for 99 years i.e. from 28.03.1985 to 27.03.2084.

This way, whole of the suit land is in the name of father of the plaintiffs i.e. Shikari s/o Raghbir, whether in sale-deed or the lease-deed for 99 years.

5. After going through the complete record, learned trial Court found that whatever stand is taken by the defendants in their written statement, as per the evidence available on record is absolutely correct. Thus, learned trial Court concluded that actually no land was left with Shikari (father of the plaintiffs), and plea of possession is not acceptable at

this stage, rather, a case would be available after the expiry of the lease period of 99 years.

6. Findings recorded in paragraphs No.10, 11 and 12, by the learned trial Court are reproduced as here-under:-

“10. I have heard rival submissions of both the sides and perused the record. It is an admitted case of the parties that father of plaintiffs i.e. Shikari son of Raghubir executed a General Power of Attorney in favour of defendant no.1 Mehar Chand on 18.02.1985 vide registered document no. 597 as Ex. P13 in respect of the suit land. It is also admitted fact that total suit land was approximate 1662 sq yards. It is also admitted fact that on the basis of this GPA, the attorney holder Mehar Chand (defendant no. 4) executed following two documents in his lifetime.

a. On 28.03.1985, a lease deed for 99 years was executed by Sh. Mehar Chand heing the GPA holder in favour of one Shikari S/o Sh. Lekha, for land measuring 15½ Bishwa Kham ie. 781 Sa, yards vide document as Ex. D6.

b. On 12.11.1987, the GPA holder, Sh. Mehar Chand executed sale deed in favour of Smt. Bhagwati Who Mehar Chand, in the life time of executor of the said GPA, Smt. Bhagwati became owner in possession of land measuring 882 Sq. yards i.e. 17 Biswas and 10 Biswanshi kham out of the suit land.

11. So, it is clear that the defendant no:4 was GPA holder for 1662 sq yards. Out of this land he has executed lease deed for 781 Sq. Yards as mentioned (a) in the last para and he has also executed sale-deed for 882 Sq. yards in favour of Bhagwati. Hence, the defendant no.4, Mehar Chand (GPA Holder of father of the plaintiffs) was left with no land in his hand. But thereafter the land for which lease deed executed by Sh. Mehar Chand in favour of Sh. Shikari S/o Sh. Lekha, after his death came to the name of his son Dharambir. On

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14.03.1990, said Dharambir son of Shikari Slo Sh. Lekha, vide lease-deed as Ex. D9, executed Bay Hakook Patta in favour of Sh. Mehar Chand in respect of 781 Sq. yards for the period from 28.03.1985 to 27.03.2084 (99 years). As such the GPA holder, Mehar Chand (defendant no.4) again became the Bay Hakook pattedar of 771 sq. yards for 99 years ie. Upto 27.03.2084.

12. However, on 04.04.1990, GPA holder Mehar Chand executed the sale-deed as Ex. D4, in favour of Sh. Jagdish Lal S/o Sh. Madan, for the land measuring 475 Sq. yards vide registered sale deed No. 62 dated 04.04.1990 duly registered in the office of Sub-Registrar, Faridabad. But this land was sold out of the 771 Sq. yards of land of which the Mehar Chand became pattedar. No doubt that after the sale of 475 Sq. Yards of land to Jagdish, the approximately 300 sq yards of land remain with the defendant no.4, Mehar Chand.”

Accordingly, the suit was dismissed by the learned trial Court.

7. When plaintiffs filed their first appeal, again complete evidence was gone through by the learned First Appellate Court, and the findings given by learned trial Court were reiterated. Observations made by the learned First Appellate Court in paragraphs No.12, 13 & 14 are reproduced as here-under:-

“12. The above facts make it clear that on the basis of GPA Ex.P14, the respondent No.1 had transferred the whole land by way of executing lease deed and sale deed. After executing the lease deed Ex.D6 in favour of Shikari and executing sale deed Ex.P6 in favour of his wife Bhagwati, the respondent No.1 was left with no other land which was received by him on the basis of GPA Ex.P14. Shikari son of Lekha had expired on 31.10.1997 and his tenancy rights were inherited by his son Dharambir and on 14.3.1990 Dharambir son of Shikari son of Lekha had executed a lease deed Ex.D9

and relinquished his tenancy rights in favour of the respondent No.1 in respect of the land measuring 781 Sq.yds for a period w.e.f. 28.3.1985 to 27.3.2084 i.e. for a period of 99 years.

13. *On the basis of said lease deed, the respondent No.1 had become lessee in respect of the land measuring 781 Sq.Yds. Thereafter, on the basis of GPA, the respondent No.1 had executed the sale deed Ex.D4 on 4.4.1990 in favour of Jagdish Lal son of Madan Lal of the land measuring 475 Sq.yds. The respondent No.1 had sold the said land out of the land measuring 781 Sq.Yds. which was in his possession being lessee. After selling the land measuring 475 Sq.yds. to Jagdish Lal, the land measuring 300 Sq.yds. remained with the respondent No.1 as lessee. Father of the appellants had expired on 31.10.1997 and prior to the death of father of the appellants, the respondent No.1 had already transferred the land on the basis of GPA. The appellants cannot claim possession of the land approximately measuring 300 Sq.yds. as the same is with the respondent No.1 as lessee till 27.3.2084. No doubt, the appellants are owners of the said land but the respondent No.1 is lessee of the said land and the appellants cannot take possession of the suit land till 27.3.2084 as the same is also in possession of the respondent No.1 being the lessee.*

14. *Admittedly, the revenue record placed on the file as Ex.P3 shows that the appellants are owners of the said land. The respondent No.1 is not the owner but he is the lessee for a period of 99 years and the appellants are only entitled for possession after the expiry of lease period. The learned lower Court had also rightly observed that the appellants are not entitled for possession as they can claim possession after expiry of lease. The learned lower Court had considered the evidence of the appellants in a correct manner and rightly dismissed their suit."*

8.

Since the findings recorded by both the learned Courts below

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are based upon the documentary evidence, and contents thereof are corroborating the stand taken by the defendants in their written statement, plea of the defendants is found to be fully proved instead of the plaintiffs. Therefore, to the view of this Court also, suit filed by the plaintiffs has been rightly dismissed.

9. Thus, I also do not find any reason to deviate from the view point taken by both the learned Courts below. Accordingly, while maintaining the findings of dismissal of suit, present appeal is hereby **dismissed**.

Besides, no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decree passed by the Courts below.

Civil misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

December 07, 2023

J.Ram

Whether speaking/reasoned: ✓ *Yes*/~~No~~

Whether Reportable: ✓ *Yes*/~~No~~