

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

103

2023:PHHC:093022

**RSA-4190-2012 (O&M)
Date of decision: 24.07.2023**

LACHHMAN SINGH (DECEASED) THROUGH LRS ..Appellant

Versus

MOHINDER SINGH (DECEASED) THROUGH LR ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ankit Grewal, Advocate
 Mr. Vaibhav Jain, Advocate
 Mr. Amarjeet, Advocate
 for the appellant.

 Mr. Pritam Singh Saini, Advocate
 & Mr. Deepak Singh Saini, Advocate
 for respondent.

ANIL KSHETARPAL, J(Oral)

CM-7354-C-2023

1. For the reasons stated in the application which is supported by an affidavit, the application for bringing on record the legal representatives of deceased late Sh. Lachhman Singh [appellant], is allowed, subject to all the just exceptions.

2. The amended memo of parties is taken on record.

3. CM stands disposed of.

CM-6463-C-2022

4. For the reasons stated in the application which is supported by an affidavit, the application for bringing on record the legal representatives of deceased late Sh. Mohinder Singh [respondent], is allowed, subject to all the just exceptions.

5. The amended memo of parties is taken on record.

6. CM stands disposed of.

Main case

7. The correctness of the concurrent findings of fact arrived at by the Courts below are sought to be questioned by the defendant in this appeal. The respondent Sh. Mohinder Singh has purchased the property from late Sh. Inder Singh vide four registered sale deeds executed in the month of June, 1995. The plaintiff (the purchaser) filed a suit for grant of decree of mandatory injunction directing the defendant (the vendor's son) to vacate the back portion of House No.104, Rani Ka Bagh, Amritsar, consisting of two bedrooms, one store, one kitchen and one open verandah-cum-drawing room. The defendant (appellant herein) contested the suit by claiming that plaintiff is not the owner of the property and Sh. Inder Singh never executed any sale deed. He also claims to be the real owner of the property. Both the Courts, as noticed above, decreed the suit filed by the plaintiff. It has come on record that late Sh. Inder Singh agreed to sell the property in favour of Sh. Mohinder Singh and in pursuance thereto, he received the entire sale consideration while issuing four receipts Ex.PW8/1, Ex.PW8/2, Ex.PW8/3, Ex.PW8/4 and an agreement to sell Ex.PW8/5 during the span of two and half years. Thereafter, on 05.05.1995 late Sh. Inder Singh on the same day executed a registered General Power of Attorney in favour of Sh. Balbir Singh son of Sh. Mohinder Singh and also executed an agreement to sell acknowledging the receipt of total sale consideration. The execution of the power of attorney has been proved by examining the marginal witness Sh. Rajesh Kumar apart from the scribe Sh. Raman Kumar. In compliance with the formal agreement to sell, as many as four registered sale deeds were executed by Sh. Balbir Singh in favour of Sh. Mohinder Singh.

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

9. The learned counsel representing the appellant has submitted that neither the original power of attorney nor the original receipts have been produced and only photocopies of these documents were produced. He further submits that there are discrepancies in the register of the scribe as the entries have been made haphazardly. He further submits that the suit filed by the plaintiff was not maintainable as the plaintiff was never in possession of any part of the property in dispute.

10. On the other hand, the learned counsel representing the respondent while drawing the attention of the Court to the record of the trial Court submits that not only the original power of attorney is Ex.P-1 but even the original receipts Ex.PW8/1 to Ex.PW8/5 are the part of the Court record. It is further submitted that the defendant (appellant herein) and his father were in litigation as two cross suits were filed. Late Sh. Inder Singh filed a suit claiming the decree of mandatory injunction to direct the appellant to hand over the possession of the back portion of the house, whereas, the defendant filed a suit against late Sh. Inder Singh restraining him from alienating the property in any manner. It has also been brought to the notice of the Court that late Sh. Inder Singh initially executed a Will in favour of his grand-son from another son while disinheriting the defendant from the succession.

11. This Court has analyzed the arguments of the learned counsel representing the parties and perused the record.

12. The learned counsel representing the respondent is correct in asserting that the original receipts, power of attorney have been produced. The original power of attorney is scribed on two pages of a non-judicial stamp paper of Rs.100/- (Rs.50/- each). Late Sh. Inder Singh has not only signed but has also thumb marked the first as well as second page of the General Power of Attorney. He has signed and thumb marked the document in the presence of Registrar on two different places in the power of attorney. Thus, late Sh. Inder Singh has appended as many as four thumb impressions and four signatures at different places in the power of attorney. On the same day, late Sh. Inder Singh executed an agreement to sell in favour of Sh. Lachhman Singh. The sale deeds were executed by Sh. Balbir Singh in favour of Sh. Mohinder Singh pursuant to the aforesaid General Power of Attorney. The appellant never challenged the sale deed executed by late Sh. Inder Singh in favour of Sh. Mohinder Singh.

13. With regard to the argument of the learned counsel representing the appellant in respect of discrepancies in the register of the scribe, it may be noted that the original document is the part of the record. This Court has carefully perused the same. It has been maintained in the regular course of business. There is some discrepancy in the date of entry at serial No.586, however, the document in question is entered at serial No.558. Moreover, there is a series of event that have taken place, and it led the Court to conclude that the General Power of Attorney is valid. From the year 1992, there are as many as four receipts of Rs.6,50,000/- executed by late Sh. Inder Singh acknowledging the receipts of part payments, whereas,

the remaining Rs.50,000/- were acknowledged under the agreement to sell. Thereafter, late Sh. Inder Singh executed two documents on 05.05.1995, one a registered power of attorney and second the agreement to sell. The register of the scribe has also been counter signed by the Sub-Registrar. Hence, a small discrepancy in the date of document at serial No.586 would not be sufficient to discard the registered document.

14. The last argument of the learned counsel representing the appellant is with regard to the maintainability. He submits that since the defendant is not in possession of any part of the property, hence, the suit for mandatory injunction is not maintainable. Originally, the property was owned by late Sh. Inder Singh, the appellant's father. Thus, the vendor's son continued in possession of some part of the property. The appellant has claimed to be owner of the property, however, he failed to lead any evidence. The plaintiff has also proved that he is in possession of some part of the property through his tenant. During his lifetime, late Sh. Inder Singh also filed a suit for mandatory injunction claiming that the appellant is in possession of some part of the property as a licensee.

15. The another argument of the learned counsel representing the appellant is to the effect that the plaintiff has changed his stand. He submits that originally the plaintiff claimed to be in possession of the some part of the property, however, subsequently, he stated that the aforesaid part is in possession of his tenant Sh. Bhupinder Singh.

16. This Court has considered the submissions of the learned counsel representing the parties.

17. Once, the vendee has a tenant who is in possession of the property, the vendee is considered to be in substantive possession of the

property. Moreover, the appellant has failed to establish any right, title or interest in the property.

18. Keeping in view the aforesaid facts and discussion, no ground to interfere with the concurrent findings of fact is made out.

19. Dismissed accordingly.

20. All the pending miscellaneous applications, if any, are also disposed of.

July 24th, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No