

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

RSA-448-2017

Reserved on: 22.12.2022

Pronounced on: March, 29, 2022

Ashok Ahuja and another

....Appellants

vs.

Prem Chand Bidhuri (since deceased) thr. LRs.

and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. J.S. Mehndiratta, Advocate for the appellants.
Mr. Aman Priye Jain, Advocate for respondent No.1
Mr. Sumit Sangwan, Advocate for respondent No.2.

HARKESH MANUJA J.

By way of present appeal, challenge has been made at the instance of appellants-plaintiffs to the judgment and decree dated 14.10.2016 passed by the court of learned Additional District Judge, Gurgaon reversing the judgment and decree dated 31.05.2013 passed by the court of learned Civil Judge (Senior Division), Gurgaon.

2. The facts of the case as pleaded at the instance of appellants-plaintiffs in their plaint are that the plaintiffs having intended to purchase some farm land, approached one Harbans Mahajan who was dealing in properties. Keeping in mind the aforesaid purpose, Harbans Mahajan entered into an agreement to sell dated 14.03.1986 qua 34 kanals-8 marlas of land situated in Village Bhondsi, District Gurgaon with its owners, namely, Raghbir Singh, Mahabir Singh & Ram Karan. Besides it, even a GPA dated 14.03.1986 was also got executed in favour of one Ved Parkash Kaushik by the original owners authorizing him to alienate the suit

property. In addition, on the same day i.e. on 14.3.1986 one registered lease deed was also executed in favour of respondent No.2/defendant No.2 qua the same land for a period of 90 years with Rs.1000/- as lease amount per annum. It is important to note here that General Power of Attorney holder Ved Parkash Kauhsik was an employee of Harbans Mahajan and defendant No.2 happened to be the cousin of Harbans Mahajan. It was further pleaded in the plaint that three different sale deeds as detailed herein below were executed on behalf of the original owners through their general power of attorney holder-Ved Parkash Kaushik, in favour of appellants-plaintiffs regarding the entire suit property measuring 34 kanals 08 marlas:-

Sr. No.	Sale deed dated	Purchaser	Area	Sale consideration
1.	08.04.1986	Appellant No.2	10 kanals 6 marlas	Rs.30,000/-
2.	17.04.1986	Appellant No.1	13 kanals 15 marlas	Rs.40,000/-
3.	07.05.1986	Appellant No.1	10 kanals 6 marlas	Rs.30,000/-

3. It was also pleaded in the plaint that the possession of land in question was handed over to the purchaser i.e. the appellants/plaintiffs by the vendors/owners. In the plaint, reference was also made to an affidavit dated 10.05.1988 furnished by respondent No.2/defendant No.2 stating that the lease deed dated 14.03.1986 executed in his favor was in fact a sham transaction just to safeguard the rights of the purchasers from being challenged by the other co-sharers asserting their peremptory rights. In the plaint, it was further stated that taking advantage of the aforesaid lease deed dated 14.03.1986, respondent No.2/defendant No.2 executed a

transfer deed dated 23.06.2005 pertaining to the leasehold rights in favour of respondent No.1/defendant No.1 by using threat and coercion & based thereupon he was trying to interfere in possession, compelling the appellants/plaintiffs to file a suit for declaration seeking their ownership based on their registered sale deed as well as challenging the lease deed dated 14.03.1986 executed in favour of respondent No.2 to be a sham transaction beside even the transfer deed dated 23.06.2005 executed in favour of respondent No.1 to be illegal, further praying for relief of permanent injunction as regards possession, alienation etc.

4. Upon notice, all the three respondents/defendants filed their separate written statements. Respondents No.2 and 3, who happened to be cousin and son of Harbans Mahajan supported the case set up by appellants-plaintiffs, whereas, respondent No.1/defendant No.1 based on his lease hold rights based on transfer deed dated 23.06.2005 claimed himself to be in possession of the property in question asserting it to be a bonafide transaction. Respondent No.1/defendant No.1 also stated that having obtained possession of the suit property based on transfer deed dated 23.06.2005, he had even raised some construction thereupon.

5. The trial court vide its judgment and decree dated 31.05.2013, decreed the suit in favour of appellants-plaintiffs, by holding the lease deed dated 14.03.1986 to be a sham and bogus document besides even recording that the subsequent transfer deed dated 31.06.2005 executed by respondent No.2 in favour of respondent No.1 was in fact a notional transaction. Finding regarding possession over the suit property were recorded in favour of appellants/plaintiffs holding them to be owners in possession thereof, by finding the suit to be within limitation.

6. Aggrieved against the judgment and decree passed by the trial court, respondent No.1/defendant No.1 filed first appeal, which came to be allowed by the court of learned Additional District Judge, Gurgaon vide judgment and decree dated 14.10.2016. The first Appellate Court primarily non-suited appellants/plaintiffs on the point of limitation by holding that the lease deed dated 14.03.1986 executed in favour of respondent No.2/defendant No.2 was required to be challenged within a period of three years from the date of its registration, besides even recording that the possession of the property was obtained by the appellants, in pursuance to partition proceedings being carried out without impleading respondent No.2 which would thus not validate their possessory rights even.

7. Challenging the judgment and decree dated 14.10.2016 passed by the first Appellate Court, learned counsel for the appellants submits that no issue-wise finding was recorded by the court of learned Additional District Judge, Gurgaon while reversing a well reasoned judgment passed by the trial Court. He further submits that the first Appellate Court being final court of fact was required to discuss the evidence in detail while recording issue-wise finding on the pleadings of the case, set up by the respective parties, particularly while reversing the same.

8. Learned counsel for the appellants also submits that in the facts and circumstances of the present case, it was apparent that the lease deed dated 14.03.1986 executed in favour of respondent No.2/ defendant No.2 was never to be acted upon and in fact, was a sham transaction. It has also been submitted that once, the learned Appellate Court recorded the appellants/ plaintiffs to be in possession of the suit property, even by way of force or power which in any case was never pleaded by respondent

No.1/defendant No.1, the case set up by respondent No.1/defendant No.1 as regards execution of the transfer deed dated 23.06.2005 and alleged consequent delivery of possession in his favour could not have been accepted at all. In support of his submissions, learned counsel for the appellants also placed reliance upon cases titled as **“Umrao vs. Shrimati Nihali and others”, 1984 PLJ 511** and **“Mohinder Singh and others vs. Shangara Singh and another”, 2007(5) RCR (Civil) 388**. In addition, it was also submitted that there was ample evidence on records to establish long settled possession of plaintiffs/ appellants.

9. On the other hand, learned counsel for respondent No.1/defendant No.1 submits that once the execution of the document i.e. lease deed dated 14.03.1986 (Ex.PW-2/3) was admitted at the instance of appellants/ plaintiffs, they cannot be permitted to blow hot and cold in the same breath by saying that the same did not confer any right, title or interest to the lessee. Based thereon, learned counsel for respondent No.1 submits that the judgment in **Umrao’s** case (supra) is not applicable to the facts and circumstances of the present case.

Learned counsel further submits that the first Appellate Court went wrong while recording finding as regards possession over the property in question in favour of appellants-plaintiffs being not based on cogent and convincing evidence as the plea of forcible possession was not even pleaded by either of the parties. In support, learned counsel for respondent No.1 relies upon the averments made in the sale deed dated 16.04.1986 (Ex.PW-2/4), to contend that even as per the said document actual possession of part of land in question was shown with the leaseholder and has not been taken into consideration by the first Appellate

Court while recording findings on the point of possession in favour of appellants/ plaintiffs. He further submits that even though no cross-objections were filed at his instance, however being one of the respondents, he was within his rights to challenge the portion of findings recorded against him by the first Appellate Court on the point of possession.

Learned counsel for respondent No.1 also submits that from the evidence available on record, it has nowhere been established that the lease deed executed at the instance of respondent No.2 in favour of respondent No.1 was hit by undue influence or coercion. Once, the signatures over the document in question i.e. lease deed dated 23.06.2005 (Ex.DA) were admitted by respondent No.2, which even contained his photograph coupled with the fact that no criminal action was ever initiated at the instance of respondent No.2 against respondent No.1, except for making a complaint only, the said document could not have been said to be hit by Section 23 of the Indian Contract Act, 1872 and, as such, the first Appellate Court was well within its jurisdiction to hold respondent No.1 to be a bonafide lessee.

Learned counsel further contends that mere fact that the original lease deed Ex.PW2/3 was produced on record from the custody of appellants/plaintiffs cannot be relied upon for the purpose of discarding the plea raised at the instance of respondent No.1 to be of a bonafide lessee, as in case of obtaining land on lease, the lessee has to only verify the factum of possession, which was validly done at his instance from the revenue record in the shape of jamabandies, which even carry presumption of truth as regards the entries made therein, under Section 44 of the

Punjab Land Revenue Act, 1887 and, as such, the production of original lease deed Ex.PW2/3 from the custody of appellants was wholly inconsequential. He further submits that the jamabandies since 1985-86 to 2005-06, recorded respondent No.2 to be in possession of the suit property being the lessee thereupon and those jamabandies were never questioned or challenged at the instance of appellants-plaintiffs even till date. He also submits that in view of the entries regarding possession as recorded in the jamabandies coupled with the factum of possession so recorded in the lease deed Ex.D-2, the documentary evidence regarding possession of the property in question with respondent No.2 followed by its transfer in favour of respondent No.1 should prevail and given precedence over the oral evidence in this regard.

Learned counsel further submits that in fact, the appellants/ plaintiffs have not been able to prove their case on record and are merely trying to draw benefit of the weaknesses from the case of respondents. He also submits that even the first Appellate Court has validly dismissed the suit filed at the instance of appellants-plaintiffs being barred by limitation as the registered lease deed in question executed in favour of respondent No.2 was notice to all and, as such, was required to be challenged at the instance of appellants-plaintiffs within a period of three years from the date of its execution itself. Learned counsel for respondent No.1 also relies upon Article 97 of the Limitation Act, 1963, so as to contend that the enforcement of right of presumption could be made within a period of one year and therefore, at best, the lease deed dated 14.03.1986 executed in favour of respondent No.2 could have protected the rights of the appellants-plaintiffs only for a period of one year and as such was of no use to them, post that.

In support of his submissions, learned counsel also relied upon ***Bandi Subhash Reddy and ors. Vs. K. Satyanarayana Reddy and ors.***, 1997 (1) RCR (Civil) 477, ***Dilboo Vs. Dhanraji***, 2000 (4) RCR (Civil) 734, ***Kavita Goud Vs. Nookla Sudarshan***, 2005 (3) CCC 575, ***Ranganayakamma Vs. K.S. Parkash***, 2006 (3) CCC 80, ***Trilok Nath Vs. Kehm Chand***, 2017 (3) PLR 1.

Learned counsel for respondent No.2 has gone on to support the case of the plaintiffs/ appellants in tune with his pleadings.

10. I have heard learned counsel for the parties and gone through the records as well as law cited at the bar.

11. In the facts and circumstances of the present case, the following questions of law are involved in this appeal:-

- i) WHETHER in the facts and circumstances of the present case, lease deed dated 14.03.1986 can be held to be a sham transaction?
- ii) WHETHER the suit filed by the plaintiffs/ appellants in August 2005, impugning the lease deed dated 14.03.1986 can be said to be barred by limitation?
- iii) WHETHER on the basis of lease deed dated 26.03.2005, respondent No.1/ defendant No.1 can be held to be a bonafide transferee?

12 (i) The primary contention raised on behalf of respondent No.1/ defendant No.1, based on Sections 91 & 92 of the Indian Evidence Act, for short 'the Act' is that in the wake of written registered lease deed dated 14.03.1986, the terms thereof have to be given precedence and no amount of oral evidence as led by the plaintiffs/ appellants could be taken into

consideration for the purpose of holding the aforesaid lease deed to be a sham transaction. The aforesaid argument raised at the instance of respondent No.1/ defendant No.1 is devoid of merit as even in the case of a registered document, it is the duty of the Court to look into the validity of any transaction and lift the veil to seek its real face by relying upon the oral evidence even as has been held by this Court in the case of **Jagan Nath Vs. Durga Datt**, 2000 (2) CCC 294. For reference, relevant para 13 thereof is reproduced hereunder:-

“13. The principle of law is well settled. It can be stated in few words to be that where a smoke screen is set up, the Court is duty bound to go into it and see the transaction. It would lift the veil and see the real face of the said transaction.”

In addition, reliance can also be placed upon a decision rendered by Hon'ble Supreme Court in the case of **Placido Francisco Pinto (D) by Lrs & Anr. Vs. Jose Francisco Pinto & Anr.**, 2021 (4) CCC 284 in this regard and relevant paras 24 & 25 thereof, are reproduced hereunder for reference:-

“24. Mr. Dhruv Mehta relied upon judgments of this Court reported as Smt. Gangabai w/o Rambilas Gilda v. Smt. Chhabubai w/o Pukharajji Gandhi, (1982) 1 SCC 4 and Roop Kumar v. Mohan Thedani, (2003) 6 SCC 595 to contend that the respondents can lead oral evidence to rebut the contents of the document but not the appellants who had relied upon the sale deed. In Gangabai, the plaintiff entered into an agreement with the appellant for a loan of Rs.2,000/- and it was decided that simultaneously the plaintiff would execute a nominal document of sale and a rent note. It was alleged by the plaintiff that documents

were never intended to be acted upon. The trial court decreed the suit holding that the sale deed was never intended to be acted upon but the First Appellate Court held that the sale has taken place but the transaction between the parties constitutes a mortgage. The High Court held that Section 92 of the Indian Evidence Act, 1872 did not prevent plaintiff from establishing the true nature of the transaction. In appeal, this Court held that first proviso to Section 92 permits any fact which may prove which would invalidate any document, such as fraud, intimidation, illegality, want of due execution can be led into evidence. This Court while dismissing appeal of the defendant held as under:

"11. ...It is clear to us that the bar imposed by sub-section (1) of Section 92 applies only when a party seeks to rely upon the document embodying the terms of the transaction. In that event, the law declares that the nature and intent of the transaction must be gathered from the terms of the document itself and no evidence of any oral agreement or statement can be admitted as between the parties to such document for the purpose of contradicting or modifying its terms. The sub-section is not attracted when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham. Such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever. For that purpose oral evidence is admissible to show that the

document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties..."

25. *A reading of the aforesaid judgment would show that it was open to the plaintiff to assert that the document was never intended to be acted upon and the document is a sham. Such question arises when one party asserts that there has been a different transaction altogether than what is recorded in the document. It is for that purpose oral evidence is admissible."*

In view of the law discussed hereinabove and upon consideration of the oral as well as documentary evidence available on record, in the facts and circumstances of the present case, following circumstances can be relied upon to hold the document/ lease deed dated 14.03.1986 to be a sham transaction which was never intended to be acted upon between the parties to it:-

- (a) The original lease deed dated 14.03.1986 (Ex.PW 2/3) was produced on record from the custody of plaintiffs/ appellants, in case said lease deed was to be acted upon, the original would have definitely been with defendant No.2/ respondent No.2 or even respondent No.1;
- (b) No proof of payment of even meager sum of lease money @ Rs.1000/- per month by respondent No.2 to plaintiffs/ appellants has been produced on record;

(c) The fact that the lease deed dated 14.03.1986 was executed in favour of respondent No.2 who happened to be real cousin of Harbans Mahajan, who was the person instrumental in effecting the land deal between the original owners and the plaintiffs further establishes the plea of the plaintiffs that the lease deed was executed just to provide protection from the preemption rights of other co-sharers of the vendors of plaintiffs and was never to be acted upon;

(d) Agreement to sell pertaining to the land in question was executed between Harbans Mahajan and original owners on 14.03.1986 and on the same day, one General Power of Attorney was got executed in favour of Ved Parkash Kaushik (who happened to be an employee of Harbans Mahajan), from the original owners, besides the lease deed dated 14.03.1986 in the name of Mahender Mahajan, respondent No.2. All these facts cumulatively show that the aforementioned three documents were part of a single transaction relating to purchase of land in question by the plaintiffs from the original owners through Harbans Mahajan taking all possible cautions to avoid enforcement of pre-emption rights by the co-sharers of the vendors of plaintiff;

(e) The aforementioned lease deed dated 14.03.1986 was followed by three sale deed dated 15.04.1986,

17.04.1986 & 17.05.1986 vide which while the land in question was transferred in favour of plaintiffs/appellants through General Power of Attorney Ved Parkash Kaushik and in one of the sale deeds even the factum of lease deed dated 14.03.1986 was mentioned. No prudent person would purchase land on payment of market price if the same was already under lease for a period of 90 years and that too for a meager sum of Rs.1000/- per annum.

In view of the aforesaid reasons, it is more than established that the lease deed dated 14.03.1986 was a sham transaction and was never to be acted upon between the parties.

12. (ii) Another question this Court needs to answer in the present case is as to whether the suit filed by appellants is barred by limitation as held by the appellate court. In that context, observations by Hon'ble Apex Court in "**Mst. Rukhmabai vs Lala Laxminarayan and others**" reported as 1960 AIR (Supreme Court) 335, are important and reproduced hereunder:-

"34. The legal position may be briefly stated thus: The right to sue under Article 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the

question whether that threat effectively invades or jeopardizes the said right.”

In my considered opinion, the above observations are fully applicable in the facts and circumstances of the present case. Appellant is right in saying that till 23.06.2005, i.e. the date of lease deed in favour of respondent No 1, there was no real threat regarding his possession on two accounts. Firstly, the original copy of lease deed dated 14.03.1986 was with appellants and secondly, affidavit dated 10.05.1988 executed by respondent No 2, admitting appellants as owners in possession, was also handed over to them. In view of these two documents, there was no real and imminent threat to the possession of appellants. More than that, respondent No.1 was not able to create fissure in the evidence lead by the appellants/ plaintiffs based on which a concurrent finding of the fact was recorded by both the Courts below that the possession of the land in question was with appellants, in particular, based on statement of Chowkidars (PW5 to PW7), letter dated 21.12.1992 (PW4/25) written by plaintiff No.1 to the police, alleging theft over the land in dispute as well as the subsequent complaint Ex.PW1/17 alleging threat of his forcible dispossession by respondent No.1.

12. (iii) Further, I am unable to find much substance in the argument raised by counsel of respondent No 1 that the purchase of lease holding right was bonafide as respondent No.1 even verified possession from mutation entries. Learned counsel for respondent No.1 even relied upon judgments to contend that on account of mutation entries, presumption is attached with respect to possession and, therefore, he purchased it after due verification. No doubt qua possession, there is

presumption attached in view of the mutation entries, but this presumption is rebuttable, which appellants were able to rebut by leading documentary as well as oral evidence and the Courts below rightly gave weightage to these evidences led by the appellants. Further, it is also required to be taken into consideration that strength of this presumption was also weak in view of the attendant circumstances. Firstly, the original lease deed dated 14.03.1986 was not with the lease holder and rather, it was with the appellants. Secondly, it was the appellants who were in possession of the demised land being handed over under partition proceedings and actual position could thus have been easily verified by respondent No 1. Thirdly, the lease holder in lease deed dated 14.03.1986, vide his affidavit dated 10.05.1988 even denied that he was in possession. Rather, in written statement filed on his behalf, it was stated that no lease amount was paid to him or to the plaintiffs under the pattanama and it was stated in his testimony before the Trial Court, that the lease deed dated 26.03.2005 was a forged document executed on account of threats & pressure and even a criminal complaint was also filed against the respondent No 1. In addition to that, in view of the conduct of respondent No.1, as observed by the Trial court, whereby he broke open the locks placed by the police and applied his lock on the gate of the property, the possibility of extending threats gains measurable significance. Beyond that, the lease money of Rs.1000/- per annum as fixed under lease deed dated 26.03.2005 which was exactly the same as fixed under the previous lease deed dated 14.03.1986 completely defeats the plea of respondent No.1 being a bonafide transferee/ lessee and that too in the absence of any proof of payment of lease money by respondent No.1 as well.

13. In view of the discussions made hereinabove, I find myself in conformity with the findings recorded by the Trial Court that distinction must be borne in mind with regard to nominal and fictitious nature of transactions which is no transaction in the eyes of law at all, as held by division bench of this court in **Umrao's case** (supra).

14. Accordingly, the judgment of the appellate Court that the present suit is barred by limitation is set aside and the appeal filed by the appellants is allowed by holding them to be owners in possession of the suit land as well as restraining respondents/ defendants from interfering in their peaceful possession or even alienating the same and also the lease deed dated 14.03.1986 being a sham and bogus transaction as well as the lease deed dated 26.03.2005 being not a bonafide transaction.

15. Pending application(s), if any, shall also stand disposed of.

March 29, 2023
sonika/sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No