IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1317-1987
Reserved on: 19.09.2023
Date of decision: 05.01.2024

SURJIT SINGH (DECEASED) THROUGH LRS. & ANR.

..Appellants

Versus

MOHINDER KAUR AND ANR.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashwani Chopra, Sr. Advocate
with Mr. Vidul Kapoor, Advocate
for the appellants.

Mr. Ritesh Aggarwal, Advocate
for respondents.

<u>ANIL KSHETARPAL, J.</u>

1. In this regular second appeal, the defendants assail the correctness of the judgment passed by the First Appellate Court, which in turn reversed the trial Court's judgment and decree. The plaintiff's suit for the grant of decree of possession of plot No.86, has been dismissed by the trial Court, however, decreed by the First Appellate Court.

2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

3. The plaintiff (respondent herein-Smt. Mohinder Kaur) on 30.10.1978 filed a suit, claiming to be owner of plots No.86, 87 and 90, situated in Shivaji Park, Yamunanagar. She claims to have purchased plot

No.86 for a consideration of Rs.3,000/- vide registered sale deed dated 08.11.1965, from Sh. Chaudhary Dilip Singh, the proprietor of M/s Bharat Land and Finance Company, Yamunanagar. Immediately, after purchasing the aforesaid plot, she constructed a room. She currently resides in Kanpur and due to her absence from Yamunanagar, she was unable to take care of the said room and as a consequence, the room got partly damaged and it became unsafe and unfit for human habitation. She has also completed foundation work on all four sides of the aforesaid plot. In her absence, the defendants (appellants) with dishonest and malafide intention encroached upon the plot and illegally constructed a boundary wall along with one room and verandah. The defendants while contesting the suit, claimed that the plot does not belong to the plaintiff and in fact it was owned and possessed by defendant No.1. M/s Bharat Land and Finance Company and they had sold the plot to defendants No.1 and 2 about seven years prior to the alleged sale deed executed in favour of the plaintiff and the defendants after getting the building plan sanctioned from the Municipal Committee, raised construction in the year 1959. Thereafter, Sh. Dasoda Singh, the plaintiff's father and Sh. Amrik Singh, the plaintiff's cousin tried to interfere in the possession of the defendants, which forced them to file a suit for grant of decree of permanent injunction, which was decreed. It was also asserted that agreement of sale of the plot in dispute was finalized in favour of the defendants on 27.06.1959, for a sum of Rs.749/-, which stood paid. Thereafter, they have been requesting M/s Bharat Land and Finance Company and its proprietor to execute a sale deed in their favour, however, no action on their part was taken but the company or its officials never objected when defendants were raising construction. After, the replication was filed by the plaintiff, the trial Court identified the following issues for adjudication:-

> *"1. Whether the plaintiff is the owner of plot No.86 in question? OPP*
>
> *2. Whether the construction referred to in para 3 of the plaint was made by the plaintiff? OPP*
>
> *3. Whether defendants No.1 and 2 are owners of the plot in question? OPD*
>
> *4. If issue No.3 is proved, whether the defendants raised any construction on the plot in question if so, to what amount? OPD*
>
> *5. Whether the plaintiff is estopped from filing the present suit, as alleged in para 2 and 3 of the addl. Pleas? OPD*
>
> *6. Whether the suit is collusive as alleged in para 5 of the adl. Pleas of W.S.? OPD*
>
> *7. Relief."*

4. On 04.03.1976, the plaintiff's suit was dismissed, however, in appeal, the case was remanded back to the trial Court. Thereafter, the trial Court culled the following additional issue:-

> *"6.A Whether the defendants are protected by the provisions of Section 53-A of the Transfer of Property Act? OPD"*

5. Once again, on appreciation of evidence, the trial Court dismissed the suit while observing that the defendants are entitled to seek protection under Section 53-A of the Transfer of Property Act, 1882 (hereinafter referred to as the '1882 Act').

6. However, the First Appellate Court reversed the judgment and decree passed by the trial Court on the following grounds:-

> i. The receipts Ex.D-1 to Ex.D-6 are not signed by both the parties.
>
> ii. The receipts are neither proved to have been executed by Sh. Dalip Singh, proprietor of M/s Bharat Land and Finance Company nor by the persons, who were authorized.

iii. It is the case of the defendants that the possession was delivered to them in the year 1955, however, perusal of the receipts does not prove that possession was transferred.

iv. DW-1 Sh. Ramesh Chander, an official from Municipal Committee, Yamunanagar, though proved sanction of the building plan in the year 1959 on the application of the defendants, however, he did not prove when the construction was raised.

v. There are certain contradictions in the evidence led by the defendants.

vi. The sanction of building plan by the Municipal Committee does not prove the ownership of the defendants.

vii. Sale of Immovable property for a value more than Rs.100/- was required to be made through a registered document.

viii. The defendants are not entitled to protection under Section 53 of the 1882 Act in part performance of the agreement to sell.

7. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record and copies provided by them. The following question comes up for adjudication:-

> "Whether agreement to sell is required to be signed by both the parties to enable the proposed vendee to claim protection of his possession in its part performance under Section 53A of the 1882 Act?"

8. It may be noted here that the original record was burnt in a fire accident, which broke out in the record room in the year 2004 at Ambala.

9. On February, 2014, the office was directed to reconstruct the record. Thereafter, the office made available skeleton record in the digital form with respect to the deposition recorded by the trial Court after remand of the case by the First Appellate Court in the first round. Hence, both the learned counsel representing the parties were requested to provide a photocopy of the record. The learned counsels have supplied the same. Consequently, this Court now proceeds to decide the case.

10. On the one hand, the learned Senior counsel representing the appellant while criticizing the judgment of the First Appellate Court contends that the judgment is perverse not only on appreciation of evidence but also on the legal issues.

11. On the other hand, the learned counsel representing the respondent has made an attempt to defend the judgment. Both the learned counsels have also filed synopsis along with the gist of their arguments.

12. At this stage, it becomes important to take note of the documentary evidence produced by the defendants. Ex.D-3 is a receipt issued by M/s Bharat Land and Finance Company acknowledging the receipt of Rs.1,200/- on 27.06.1959, towards the installment for plot No.86 measuring 201 square yard at the rate of Rs.11/- per square yard in Shivaji Park, Yamunanagar. As per the terms and conditions printed on the reverse side of the aforesaid receipt, it is stipulated that the payment shall be made on monthly basis from the date of booking and full payment shall be completed by the intending purchaser within a period of one year from the date of booking. Ex.D-4 is a receipt acknowledging the payment of Rs.50/- on 01.06.1960. Ex.D-5 is a receipt dated 09.07.1960, acknowledging

payment of Rs.100/-. Ex.D-6 is a receipt dated 03.06.1961, acknowledging receipt of Rs.200/-. Ex.D-1 is a receipt dated 01.03.1962, acknowledging receipt of Rs.119/- with respect to plot No.86, measuring 159 square yard at the rate of Rs.11/- per square yard. In the receipt Ex.D-3, size of the plot was mentioned as 201 square yard, whereas, in the final receipt, the total size of the plot is mentioned as 159 square yard. The total price of the plot measuring 159 square yard at the rate of Rs.11/- comes to Rs.1749/-. The defendants have produced a receipt from Ex.D-1, D-3, D-4, D-5 and D-6, showing the receipt of complete payment of Rs.1749/-. In order to prove these receipts, the defendants have examined Sh. Ramesh Chand, former employee of M/s Bharat Land and Finance Company. He has admitted that the defendant Sh. Surjit Singh was put in possession after sale of the same by the company and it is Sh. Surjit Singh, who had raised construction on the property. Similarly, the defendants also examined DW-4 Sh. Kedar Nath, who admitted that the receipt Ex.D-1 was issued by him and all the receipts were issued by M/s Bharat Land and Finance Company. He further stated that on 30% payment of the price of the plot, the possession is delivered and the owner of the company has died and the company does not exist now. Both these former employees of M/s Bharat Land and Finance Company not only proved that the total price of the plot was paid but also proved that the possession was delivered and it is the defendant, who raised construction. Coupled with the aforesaid facts, the defendant has examined Sh. Ramesh Chander, an official from Municipal Committee, who has proved that in the year 1959, the defendant got the building plan sanctioned.

13. It may be noted here that the plaintiff has filed a suit with respect to plot No.86, measuring 52 feet 6 inches X 27 feet 2 inches. The total area comes to 159 square yard. The plaintiff also claims that she

purchased 159 square yard through a registered sale deed executed on 08.11.1965. This is the exact area specified in the receipt Ex.D-3. The total price as per the said receipt comes to Rs.749/-, which has been duly deposited by the defendants.

14. Furthermore, on a careful perusal of sale deed Ex.PW-4/A executed in favour of the plaintiff, it is proved that the total area of the plot is more than 157 square yard, which is similar to the area of the suit property.

15. It has also come on record that defendants are in continuous possession of the property before 1972. In fact, defendants filed a civil suit No.161 of 1972 against the plaintiff's father and cousin for grant of permanent injunction, which was decreed on 28.07.1973 (copy of the judgment Ex.D-2). In these circumstances, the plaintiffs possession and construction is also proved.

16. At this stage, it will be appropriate to analyse the reasons recorded by the First Appellate Court while reversing the trial Court's judgment.

17. The first reason lacks substance because once the former official of M/s Bharat Land and Finance Company admits the issuance of receipt Ex.D-1 and also admits that all the receipts have been issued by the company, the agreement in writing is proved. The agreement to sell is not required to be signed by both the parties. Section 54 of the 1882 Act does not lay down that the agreement to sell is required to be signed by both the parties. The agreement to sell can also be oral. A unilateral receipt issued by the developer containing the terms and conditions of the sale is sufficient to prove the execution of an agreement to sell. Reliance in this regard can be placed upon ***Aloka Bose Vs. Parmatma Devi and others (2009) 2 SCC 582***

and (1993) 2 PLR 79.

18. The second reason assigned by the First Appellate Court is also erroneous because DW-4 Sh. Kedar Nath has categorically stated that all the receipts have been issued by the company and receipt Ex.D-1 is signed by him, which is the token of receipt of final payment. Sh. Dalip Singh, the proprietor of the company has died. The receipts are proved to have been issued by the company and its officials. The First Appellate Court has also erred in observing that these receipts could be used only against Sh. Raj Kumar and Sh. Kedar Nath. It may be noted here that Sh. Raj Kumar and Sh. Kedar Nath were working in M/s Bharat Land and Finance Company. Hence, the receipts issued in the printed format of the company are binding not only against Sh. Raj Kumar and Sh. Kedar Nath i.e. the authorized signatories but also against the company.

19. The next reason assigned by the Court is fallacious. It has become evident that the defendant while filing the written statement has specifically stated that Sh. Surjit Singh had purchased the plot seven years before the sale deed was executed in favour of the plaintiff. It signifies that the purchase was made in the year 1958, because the sale deed in favour of the plaintiff was executed on 08.11.1965. A perusal of the receipt shows that the first payment of Rs.1,200/- was paid on 27.06.1959. An oral statement of Sh. Surjit Singh that he was delivered possession in the year 1955, is not sufficient to reject his entire case particularly when overwhelming evidence has been produced. Moreover, once it is proved that Sh. Surjit Singh raised construction, it was no longer an open plot and hence presumption in favour of the owner could not be assumed.

20. The next reason assigned by the First Appellate Court is insubstantial because DW-1 Sh. Ramesh Chander has proved that on the

request of Sh. Surjit Singh, the building plan was sanctioned in the year 1959 by the Municipal Committee. He was not required to prove in which year the construction begun and was completed.

21. The First Appellate Court has also erred in observing that from the report of the local commissioner, the case of the plaintiff is proved. The First Appellate Court has drawn inference on the basis of the fact that when the building was inspected, it was a mixture of new and old construction. It may be noted here that it is the positive case of the defendants that they constructed the property after they purchased the plot. The repair and maintenance of old building from time-to-time is inevitable. This particular fact itself would not prove that the plaintiff had got the room constructed, particularly when the plaintiff has herself stated that the aforesaid room had been demolished.

22. The last reason assigned by the First Appellate Court is also erroneous because it was for the plaintiff to prove that these receipts were not issued by a duly authorized person, particularly when two former employees of the company namely Sh. Ramesh Chand and Sh. Kedar Nath admitted the issuance of the receipts. It is not the case of the plaintiff that these receipts were issued by the unauthorized persons on behalf of the company. In fact, the First Appellate Court has tried to make out a new case for the plaintiff. Similarly, the First Appellate Court has erred in observing that the sale of the immovable property valuing more than Rs.100/- is required to be made through a registered document. In this case, the defendants are seeking protection of their possession in terms of Section 53A of the 1882 Act, a provision that does not require the registration of agreement to sell as an essential factor. However, the 1882 Act and other related acts were amended in the year 2001, and as per the new amendment,

the agreement to sell must be registered if the purchaser desires to protect his possession under Section 53A of the 1882 Act.

23. At this stage, it may be noted here that the Supreme Court in ***Shrimant Shamrao Suryavanshi and another Vs. Pralhad Bhairoba Suryavanshi (dead) by LRs and others, (2002) 3 SCC***, after dissecting Section 53-A of the 1882 Act, laid down the following necessary conditions:-

> *"But there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act. The necessary conditions are*
>
> *1) there must be a contract to transfer for consideration any immovable property;*
>
> *2) the contract must be in writing, signed by the transferor, or by someone on his behalf;*
>
> *3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained;*
> *4) the transferee must in part performance of the contract take possession of the property, or of any part thereof;*
>
> *5) the transferee must have done some act in furtherance of the contract; and*
>
> *6) the transferee must have performed or be willing to perform his part of the contract."*

24. If the aforesaid necessary conditions are applied to facts of the present case, it becomes evident that the defendants fulfill all the aforesaid conditions laid down in Nos.1 to 6. The first condition is that a contract to transfer is required for consideration. The second condition is that the contract must be in writing, signed by the transferor or someone on his behalf, which has also been fulfilled. The requirement of condition No.3 is also fulfilled because as per the terms and conditions printed on the reverse side of the receipts, the terms of transfer can be clearly ascertained. The fourth condition is fulfilled because the delivery of possession in favour of the defendant is proved. The fifth condition is also satisfied because the

defendant has not only paid the entire sale consideration but has also raised construction. It is also proved that the defendant contacted the proprietor of the company to transfer the property as stated by Sh. Surjit Singh as well as DW-1 Sh. Ramesh Chander and DW-4 Sh. Kedar Nath.

25. It may be noted that although there is no valid/enforceable sale of the plot in favour of the defendants, however, they are entitled to protect their possession under Section 53A of the 1882 Act, as they fulfil all the necessary requirements as laid down in the said provision. Though, the learned counsel representing the respondents has submitted that the requirements of Section 53A are not fulfilled, however, as already discussed the requirements of Section 53A stand fulfilled by the defendants. With respect to the next argument, it may be noted that the receipts Ex.D-1, D-3, D-4, D-5 & D-6 do not confer any title on the defendants, however, they are sufficient to protect their possession under Section 53A of the 1882 Act.

26. Keeping in view the aforesaid facts and discussion, the appeal is allowed and First Appellate Court's judgment and decree is set aside and that of the trial Court is restored.

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

January 05th 2024 **(ANIL KSHETARPAL)**
Ay **JUDGE**

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