

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(i) RSA-2708-2023 (O&M)

Madhu Sudan Appellant
Versus

Ashwani Kumar Love and others Respondents

(ii) RSA-2731-2023 (O&M)

Madhu Sudan Appellant
Versus

Ashwani Kumar Love and others Respondents

Date of Decision : 04.01.2024

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Shailendra Sharma, Advocate
for the appellant.

Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the Caveator/respondents.

VIKRAM AGGARWAL, J

1. By way of the instant judgment, two regular second appeals titled above shall stand decided. Though, both appeals arise out of separate suits, the property in dispute and parties to the lis are same. Therefore, the common judgment.

2. One Late Sh. Diwan Chand had two sons namely Ashwani Kumar

Love and Madhu Sudan. The dispute revolves around house No.2341, Sector 7-A, Housing Board Colony, Faridabad (hereinafter referred to as 'the disputed house'). Both brothers are engaged in the current litigation apart from two other persons namely Satya Prakash and Balraj Singh who are subsequent purchasers of the disputed house.

3. Since the parties to the lis and the disputed house are the same, the facts are being taken from Civil Suit No.236 dated 23.10.2013/16.09.2017, titled as 'Ashwani Kumar and others Versus Madhu Sudan' though essential facts from the other suit shall also be referred.

4 (i). Ashwani Kumar, Satya Prakash and Balraj Singh (hereinafter referred to as 'the plaintiffs') instituted a suit for mandatory injunction against Madhu Sudan (hereinafter referred to as 'the defendant) to vacate the ground floor of the disputed house of which he was in possession and for consequential relief of permanent injunction. The pleaded case was that the disputed house was allotted to plaintiff No.1 Ashwani Kumar in a draw of lots held on 21.07.1973. Allotment letter dated 29.01.1973 was issued. The entire sale consideration was paid by plaintiff No.1 Ashwani Kumar. The conveyance deed was executed on 01.07.1992 which was duly registered on 20.07.1992. The defendant, on account of being the younger out of the two, requested plaintiff No.1 to permit him to reside on the ground floor of the disputed house as a licensee. The requisite permission was granted. However, subsequently, plaintiff No.1 sold the disputed house to plaintiffs No.2 and 3 namely Satya Prakash and Balraj Singh vide registered sale deed dated 30.11.2011. The defendant had assured that the vacant possession of

the disputed house would be handed over to the plaintiffs after the execution of the sale deed. However, since he did not honour his commitment, the suit was instituted. It was also pleaded that the defendant had instituted a suit for declaration with consequential relief of permanent injunction in which initially an ex parte order was passed but subsequently the same was vacated. The licencee was revoked by way of legal notice dated 04.10.2013 but despite the same, the defendant had not vacated the disputed house.

4(ii). The defendant opposed the suit. In the written statement, certain preliminary objections with regard to maintainability, cause of action, the suit being bad for mis-joinder and non-joinder of necessary parties etc. were raised. On merits, a stand was set up that the disputed house had infact been purchased by the father of the parties namely Sh. Diwan Chand and a family settlement had been executed, as per which, the ground floor had been given to the defendant whereas plaintiff No.1 had been given the remaining portion. It was averred that the defendant was, therefore, the owner in possession of the ground floor in terms of the family settlement dated 09.09.1988 which had duly been signed by plaintiff No.1, defendant, Sh. Diwan Chand and the witnesses. It was also averred that construction had been raised by Sh. Diwan Chand and all expenses had been borne by him.

4(iii). In the suit instituted by the defendant for declaration with consequential relief of permanent injunction, a similar stand was taken and an injunction was sought restraining the plaintiffs herein from interfering in his peaceful possession over the ground floor of the disputed house.

4(iv). From the pleadings of the parties, the following issues were framed

in the present suit:-

1. Whether the plaintiff is entitled to a decree of mandatory injunction directing the defendant to hand over the peaceful and vacant possession of the property in dispute mentioned in the para no.6 of the plaint and further be restrained from changing nature of the suit land in any manner ? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
3. Whether the suit is bad for mis-joinder and non-joinder of necessary parties ? OPD
4. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct ? OPD
5. Whether this Court has no jurisdiction to try the present suit ? OPD
6. Whether the plaintiffs have concealed the true and material facts from the Court ? OPD
7. Relief.

Two additional issues were framed which are as follows:-

- 2-A. Whether the ground floor of House No.2341, Sector 7-A, Housing Board Colony, Faridabad was purchased by the father of plaintiff no.1 and defendant ? OPD
- 2-B. Whether the ground floor of House in dispute belongs to defendant ? OPD

4(v) In so far as the other suit is concerned, the following issues were framed:-

1. Whether the plaintiff is entitled for a decree of declaration to the effect that the plaintiff is the owner in possession of the ground floor of the said house No.2341, Sector 7-A, Housing Board Colony, Faridabad ? OPP

2. Whether the plaintiff is entitled for a decree of permanent injunction restraining the defendants from selling/alienating the suit property to any person and from dispossessing the plaintiff from the ground floor in question and from interfering in the peaceful possession of the plaintiff over the ground floor in question ? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
4. Whether the plaintiff has no locus standi and no cause of action to file the present suit ? OPD
5. Relief.

4(vi). Parties led their respective evidence. The trial Court decreed the suit for mandatory and permanent injunction filed by the plaintiffs vide judgment and decree dated 16.07.2018 and the appeal filed by the defendant against the same was dismissed vide judgment and decree dated 22.11.2022, passed by the Additional District Judge, Faridabad, leading to the filing of the present second appeal. Similarly, the suit filed by the defendant for declaration with consequential relief of permanent injunction was dismissed vide judgment and decree dated 06.05.2017, passed by the Civil Judge (Junior Division), Faridabad and the appeal preferred against the same was also dismissed vide judgment and decree dated 17.10.2022, passed by the Additional District Judge, Faridabad.

5. I have heard learned counsel for the parties and have also perused the record which was duly summoned.

6(i). Learned counsel for the appellant-defendant strenuously urged that both the Courts below erred in non-suiting the defendant and rejecting his

claim without delving deep into the issue. Learned counsel submitted that the Courts below erroneously discarded the family settlement which was duly brought on record whereas its execution had duly been proved.

6(ii). It was submitted that the suit for mandatory injunction was not maintainable and that a suit for possession should have been filed. Learned counsel submitted that an objection in this regard had duly been taken in the written statement but no replication was filed.

6(iii). Learned counsel further submitted that the defendant had duly established his possession over the disputed house and despite that, the Courts below non-suited the defendant. Learned counsel further submitted that the Courts below also wrongly came to the conclusion that the family settlement was required to be registered whereas its registration was not required.

7. Learned counsel representing the respondents-caveator was also heard. He submitted that there is no illegality in the findings recorded by the Courts below calling for interference in second appeal. Learned counsel submitted that both the Courts have considered the matter from the correct perspective and have analyzed the evidence led on the record of the case before deciding the suits. He submitted that the documents of title were in the name of plaintiff No.1 and that the version of the defendant was only oral. Learned counsel submitted that no evidence worth its name was led by the defendant to prove his case and the Courts below, therefore, rightly discarded his case.

8. I have considered the submissions made by learned counsel for the

parties.

9(i). Before advertng to the merits of the appeal, it would be essential to observe that that the requirement of framing of a substantial question of law in second appeal in terms of the provisions of Section 100 of the Code of Civil Procedure and as had been laid down in various pronouncements by the Hon'ble Apex Court including ***Hero Vinoth (minor) versus Seshammal 2006 (5) SCC 545***, was subsequently held to be not there by the Hon'ble Apex Court. It was held that in the States of Punjab and Haryana, it is the provisions of the Punjab Courts Act, 1918 which would be applicable and, therefore, Section 100 CPC would not hold the field and, accordingly, there would be no requirement of framing substantial questions of law in second appeal. With regard to the States of Punjab and Haryana, it was so held in ***Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019 (3) R.C.R. (Civil)*** and ***Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92*** respectively.

9(ii). It was further held in the judgment of ***Satyender and others Versus Saroj and others*** (supra) that though the requirement of formulation of a substantial question of law is not necessary, yet Section 41 of the Punjab Courts Act requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the Courts below had failed to determine some material issue of law or custom or usage having the force of law. It was held that what was, therefore, important was still a "question of law". It was also held that a second appeal was not a forum where the Court would re-examine or re-

appreciate questions of fact settled by the trial Court and the Appellate Court.

While holding so, the judgment in the case of ***Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors.*** (supra) was also considered.

10(i). Coming to the appeals in hand, admittedly, the disputed house was allotted to plaintiff No.1 Ashwani Kumar. The allotment letter dated 05.06.1973 was produced on record as Ex.P-15. The conveyance deed dated 01.07.1992 was produced on record as Ex.P-23. The alleged settlement dated 09.09.1988 was brought on record but the original copy of the same was not produced in the present case. A copy of the same was produced on record but admittedly, the settlement deed was an unregistered document conveying rights in immovable property of the value of more than ₹100/-. Still further, the settlement deed does not inspire any confidence since admittedly the disputed house was owned by plaintiff No.1 and the defendant could not lead any evidence to prove that the disputed house had been purchased by Sh. Diwan Chand out of his own funds or that he had incurred the expenditure on construction of the same. It was a mere oral version not supported by any evidence worth its name.

10(ii) Merely on account of electricity bills and other bills being in the name of the defendant, he would not be conferred with the ownership of the disputed house and such bills etc. can at best be stated to be proof of possession which, in any case, was the admitted case of the parties. The only question to be determined was as to whether the defendant was in possession of the ground floor of the disputed house as its owner in pursuance to the settlement deed or a licensee as claimed by plaintiff No.1. As has already

been observed, in the absence of any oral or documentary evidence worth its name, the defendant was not able to prove that he was the owner of the ground floor of the disputed house.

10(iii). It also came on record that apart from the suit for permanent injunction which was dismissed on 27.09.2017, another suit for declaration had been instituted by the defendant which had also been dismissed on 06.05.2017. It is, therefore, apparent that the defendant was trying his luck by way of repeated suits all of which met the same fate.

10(iv). It would also be important to mention here that even in the suit filed by the present defendant for permanent injunction, though the alleged family settlement dated 09.09.1988 was produced on record as Ex.P4, the unregistered document nowhere mentioned the word 'family settlement' and the same was coined by the defendant himself in the suit. Plaintiff No.1 Ashwani Kumar denied his signatures on the said document and no evidence was led by the defendant Madhu Sudan to prove the same. He, infact, could not prove even the signatures of his father on the said document. Even the statement of the alleged witness who appeared as DW3 was not found to be trustworthy as was found by both the Courts below.

10(v). Even otherwise, the case set up by the defendant is bereft of any logic as nobody would purchase a house and put his brother in possession of the ground floor as its owner. It was also not explained as to why the documents of title were in the name of the plaintiff No.1 Ashwani Kumar. It appears that the problem started when plaintiff No.1 Ashwani Kumar intended to dispose of the dispute house which he eventually did.

10(vi). In any case, the defendant Madhu Sudan could not at all prove any right, title or interest in the disputed house which could have led the Courts to accept his claim.

10(vii). In the considered opinion of this Court, the Courts below examined the matter from the correct perspective and rightly non-suited the defendant Madhu Sudan. This Court does not find any reason to interfere with the well reasoned findings of facts and law recorded by the Courts below. No question of law arises warranting interference in second appeal.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeals and the same are accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

04.01.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No