



RSA No.1788-1989

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

(1)

RSA No.1788-1989

Reserved on:18.04.2024

Pronounced on:29.04.2024

Pritam Singh through his LRs

.....Appellant(s)

Versus

Nand Singh and another

.....Respondents

(2)

COCP-1099-1998

Nand Singh

.....Petitioner

Versus

Lachman Singh Hawaldar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

**Present: Mr. J.S. Brar and
Mr. H.R. Bhardwaj, Advocates,
for the appellant(s).**

**Mr. Arun Bansal, Mr. Anubhav Bansal and
Ms. Bharti, Advocates,
for the respondents.**

VINOD S. BHARDWAJ , J.

The appellant-defendant is in Regular Second Appeal against the judgment and decree dated 22.02.1986 passed by Sub Judge Ist Class, Moga in Civil Suit No.604-T of 27.10.1984 as well as against the judgment and decree dated 19.05.1989 of the Additional District Judge, Faridkot passed in Appeal No.45 of 1986 dismissing the appeal.



Briefly summarized the facts of the present case are that the respondents-plaintiffs claimed to be owners in possession of land measuring 2 kanals and 3 marlas comprised in khasra No.669 as detailed in the head-note of the plaint and defendant Nos.3 to 13 claimed to be owners in possession of the land measuring 3 kanals 4 marlas. It was pleaded that defendant Nos.3 to 6 were sons of Mehna Singh while defendant Nos.7 to 13 were impleaded as proforma defendants being legal heirs of one Bhag Singh. The respondents-plaintiffs claimed to have planted 03 kikkar trees, one beri and one dek tree at the disputed site which was also used to store cow dung cakes. The appellant-defendant Nos.1 and 2 claimed that they got the land from someone by way of transfer and claimed to have stored bricks and material at the site. The appellant-defendant was alleged to have threatened by the respondents-plaintiffs for forcible dispossession of the site leading to institution of the suit.

Appellant-defendant No.1-Pritam Singh filed a written statement claiming that the respondents-plaintiffs sold their share of land to a number of persons, namely, Pritam Singh, Lal Singh, Harbinder Singh, Gurdial Kaur etc. and that the respondents-plaintiffs are neither in possession nor do they have any connection with the suit land. It was claimed that he had constructed a residential house in the plot in dispute about 20 years ago by spending a sum of Rs.30,000/-. It was also claimed that a Dharamshala and a house had also been constructed and the respondents-plaintiffs had the knowledge of the same. He thus claimed that he was already in possession of the suit land having purchased the same vide a registered sale-deed in his favour.

On completion of pleadings, the following issues were framed:-

“1. Whether plaintiffs are owners of suit land? OPP



2. *Whether the plaintiffs are in possession of suit land? OPP*
3. *Whether the defendants took possession of part of suit property during the suit? OPP*
4. *Whether the defendant have violated the ad interim injunction? OPP*
5. *Whether the plaintiff is entitled to the declaration prayed for? OPP*
6. *Whether the suit is properly valued for purposes of court fee and jurisdiction? OPD*
7. *Whether suit is time barred? OPD*
8. *Whether the suit is bad for non-joinder of parties? OPD*
9. *Relief.”*

The parties led their respective evidence and advanced arguments. The matter was considered and the suit was dismissed. While dealing with the issues as to whether the respondents-plaintiffs were owners of the suit land, the Sub Judge Ist Class, Moga considered the evidence relied upon by the parties. As per the jamabandi for the year 1977-78(Ex.P1), khasra No.669 measuring 2 kanal has been shown in the ownership of three persons with 1/3rd share each along with khasra No.677 and was shown as Banjar in cultivating possession of all the co-sharers. The plaintiff witnesses admitted that plaintiffs resided in village Machi-ke-Kalan and have their house there and are engaged in agriculture. The appellant-defendant No.1 Pritam Singh resided in village Machi-ke-Kalan and being Sarpanch, he raised unauthorized construction in the year 1983. The property adjacent to the plot was donated by ancestors of plaintiff for a Dharamshala which abuts the house of appellant-defendant No.1 Pritam Singh.

In order to rebut the ownership, Pritam Singh(appellant-defendant No.1) claimed to have purchased property from Nand Singh and Gurmukh Singh

and placed reliance on entries in a register mentioned by his father in the form of

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sale-deeds entered at Srl. Nos.381, 382, 384, 385 & 383. It was pointed out that same boundaries were mentioned in the sale-deed and possession was mentioned to be handed over later. The sale-deeds were for a denomination of less than Rs.100/- and all these sale-deeds were entered on the same day. Report of Local Commissioner (Ex.DE) and site plan(Ex.DG) were also obtained.

It was noticed that in the sale-deed(Ex.DA) dated 19.11.1959, out of one kanal of land sold by the respondent-plaintiff-Nand Singh as attorney of Gurmukh Singh, the same was for a sum of Rs.99/- and that there was a promise to hand over the vacant possession. In the sale-deed(Ex.DB) dated 19.11.1959, there was a promise to hand over possession to the extent of 1/3rd share in favour of Mohinder Singh. The same was a case of purchase of mortgagee rights only. In another registered sale-deed(Ex.PC), the area is to the extent of 1/3rd out of one kanal which comes to roughly 6 marlas 6 sarsai. The total area of three sale-deeds thus is not covered by the sale-deeds and that a report of the local commissioner, Ex.DE was also called for wherein it was made clear that the property could be divided into three parts, however, there was nothing to decide as to how khasra No.669 measuring 2 kanals 3 marlas would be located. It was also noticed that as per report of the local commissioner out of 1 kanal 13 marlas, only an area measuring 13 ft. x 12 ft. was shown in part 'A' while the remaining area is lying vacant. Similarly, an area measuring 12 ft. x 12 ft. has been shown to be enclosed by walls only in part 'C'. It was noticed that the allegation of the respondents-plaintiffs that the appellant-defendant raised construction during pendency of the suit was thus meritorious. It was further noticed that the unregistered sale-deeds Ex.DA to DE also established that the seller did not deliver actual physical

possession and only promised to hand over the vacant possession. Hence, the



appellant-defendant could not have obtained possession from his vendors. It was recorded that there was no counter-claim filed by the appellant-defendant seeking declaration that he had become owner of the suit property by virtue of unregistered sale-deeds and that there is no defence of adverse possession being claimed. Nonetheless, claim of the appellant-defendant was also assessed on the basis of a declaration, if any, sought on the basis of the unregistered sale-deeds dated 19.11.1959, the same would have been barred by limitation. It was further noticed that the appellant-defendant failed to prove as to how any person other than Krishan Singh could execute the documents on 19.11.1959. The case of the appellant-defendant being that he purchased the property from the respondents-plaintiffs as attorney of Gurmukh Singh, but there is no power of attorney that is brought on record or attached to the unregistered sale-deeds and as such, it cannot be said as to whether Gurmukh Singh had authorized any person to sell the property.

Once the case of the appellant-defendant itself is to the effect that he purchased the land of Gurmukh Singh through the respondent-plaintiff, in the absence of the power of attorney authorising such sale for and on behalf of Gurmukh Singh, no valid title could have been said to have passed on to the appellant-defendant by virtue of the unregistered sale-deed.

It was accordingly held that the respondents-plaintiffs were the owners of the suit property. The issue as regards that the respondents-plaintiffs being in possession of the suit land and as to whether the appellant-defendant took possession of a part of the suit property during the suit while taking an interim order were tried together. It was noticed by the court that in the unregistered sale-



there is no evidence on record to establish the date of actual physical possession. Even if the unregistered sale-deed is taken into consideration, the same would not establish that the appellant-defendant was put into possession immediately thereafter.

Reference was also made to the report of the local commissioner(Ex.DE) wherein it was stated that Pritam Singh had constructed a room about 5/6 years ago and was in possession of only that room. The said evidence was read in the light of statement of Chand Singh(PW1) who stated that after passing of the interim order by the court, the appellant-defendant-Pritam Singh forcibly raised the construction. The report of the local commissioner suggested that the room was constructed about 5/6 years ago. The construction was raised later in point of time and the defendants were liable to be ejected. The other issues were also decided in favour of the respondents-plaintiffs and the suit was decreed for declaration that the respondents-plaintiffs were owners in possession of the land bearing khasra No.669 measuring 2 kanals 3 marlas as per jamabandi for the year 1977-78 situated in village Machhi-ke and the appellant-defendant was restrained from ejecting or interfering or making any type of construction on the land.

Aggrieved thereof, an Appeal No.45 of 1986 was instituted before the Additional District Judge, Faridkot.

After hearing the learned counsel for the parties, the Additional District Judge, Faridkot noticed that the contention of the appellant whereby they stated that the respondents-plaintiffs are not the owners of the suit land and instead, they are the owners by virtue of having purchased it from Nand Singh and



unregistered sale-deeds were for a sum of Rs.99.15 and Rs.50/- and were executed on one date regarding the same property between the same parties. Hence, the transaction was for more than Rs.100/-. By bifurcating the sale-deeds in different parts, the provisions of Section 54 of the Transfer of Property Act could not be defeated as any property of a value more than Rs.100/- was required to be compulsorily registered. Further, it was also noticed that the said documents did not establish on record that the possession was delivered to the appellant-defendant at the time when the sale-deeds were executed. DW2-Hans Raj only proved the signatures of his father who scribed the sale-deeds(Exs.DA to DE) while DW3 was the attesting witness of the sale-deeds. In his cross-examination, he admitted that Nand Singh and Gurmukh Singh were not known to him and it was noticed that there was nothing on record on the basis whereof it can be said that the sale-deeds have been attested/affixed in the presence of the said witnesses. It was further noticed that even if it is assumed that value of the property was less than Rs.100/-, the possession ought to have been delivered and no title can be transferred in the absence of delivery of possession. Since the sale-deeds were unregistered, the burden lies on the appellant-defendant to establish the delivery of possession to claim title. The same having not been established or proved on record, the appellant-defendant cannot be declared to be owner of the property. It was also recorded that the respondent-plaintiff on the other hand proved his ownership in possession in the suit property which was duly corroborated by the revenue record as well as testimony of the witnesses. The court also referred to the report of the local commissioner and held that the same did not come to the aid of the appellant-defendant to establish his possession from 1959 but only on the day when he



defendant while the remaining land was lying vacant. There was also no dispute with respect to the area of Dharamshala as the same had been donated. It was reiterated by the Additional District Judge, Faridkot that the construction was raised after the institution of the suit. The appeal was dismissed and the judgment and decree passed by Sub Judge Ist Class, Moga, were upheld.

Aggrieved thereof, the present appeal has been filed.

Learned counsel for the appellant has raised the following arguments:-

- (i) That the evidence led by the appellant-defendant has not been dealt with and that a specific plea about delivery of possession had been raised by the appellant-defendant in his written statement which was not denied by the respondent-plaintiff.
- (ii) He submitted that the response filed was evasive and that the same ought to be construed as an admission of a specific plea regarding delivery of possession. It was also argued that the possession of the property was handed over to the appellant-defendant at the time of execution of the sale-deeds and that the report of the local commissioner established his possession over the property which corroborated his stand.

It is also submitted that the revenue record described the land as *banjar qadim* and as such the actual physical possession of the respondent-plaintiff cannot be stated to be established on the land.

He also submits that the contention of the respondent-plaintiff that possession of the land was taken after the institution of the suit deserves to be rejected for the reason that no proceedings under Order 39 Rule 2A CPC was initiated by the respondent-plaintiff if any forcible possession of the property had



been taken. Hence, the conduct of the respondent-plaintiff establishes actual physical possession of the appellant-defendant.

Responding to the above, counsel for the respondents-plaintiffs contends that the sale-deeds(Exs.DA to DE) relied upon by the respondents-plaintiffs are all unregistered and are of value of less than Rs.100/-. Hence, in order to show a transfer of title, the appellant-defendant was required to establish delivery of actual physical possession. He submits that the courts have duly taken note of the said contention and have also gone through the respective sale-deeds and recorded a finding that the possession of the property was not delivered at the time of the execution of the unregistered sale-deeds. There is no evidence led on behalf of the appellant-defendant on the basis whereof he can claim or establish the delivery of physical possession to him at any point later in time. Even the sale-deeds have not been established as it is only an entry in the register, having same boundaries.

It is further argued that the testimony of PW1-Chand Singh son of Santokh Singh establishes that the suit land is in the ownership of the respondents-plaintiffs and is in their actual possession for storage of cow dung and debri(Aroori) and that the appellant-defendant has no right, title or interest and that he had set up a kacha kotha after the stay was granted by the civil court. A reference is also made to the testimony of appellant-defendant Pritam Singh as DW1 wherein it is stated that he purchased the land from Nand Singh and Gurmukh Singh. It was stated that the land had been earlier sold by Gurmukh Singh and Nand Singh(respondents-plaintiffs) in favour of Lal Singh and Piara Singh whereupon it was sold by Harbinder Singh, Lal Singh and Gurdev Kaur to

the appellant-defendant. He claimed to have purchased the same around 26/27



years ago and raised construction by spending Rs.30,000/-. In his testimony, he submitted that the respondent-plaintiff does not have any possession on any portion of land which such claim stands demolished from the report of the local commissioner. It was stated by the appellant-defendant that had it been mentioned in the agreement that a sum of Rs.2000/- had been given to Harminder Singh and that one Balwinder Singh is also called as Harvinder Singh and that he had sold his portion of the land for a sum of Rs.2000/-, however, no such receipt with respect to consideration of the sale-deeds was ever produced. It was also pointed out that even though it is contended that the land had been sold by Nand Singh for and on behalf of Gurmukh Singh as a power of attorney, however, no such power of attorney has also been produced on record and that in the absence of the said power of attorney, the unregistered sale-deeds cannot even otherwise be relied upon as a valid document in respect to the share of Gurmukh Singh.

Reference was also made to the report of the local commissioner, Ex.DX wherein he has shown three specifically demarcated portions of the property. While part 'A' measuring 1 kanal 13 marlas, a kacha kotha of 13 x 18' was reported to be constructed, the Dharamshala is shown in part 'B' along with the vacant area and in part 'C', a small room of 12 x 12' was shown along with the vacant area. It was reported that the appellant-defendant was in possession of the room wherein he had put his fodder and there were only three walls. The room had been constructed about 5/6 years ago only. He submits that the unregistered sale-deeds did not show delivery of actual physical possession and the appellant-defendant could not refer to any evidence/document or date on which such physical possession was delivered to him. It was thus not established from the documents

that the appellant-defendant was actually in physical possession of the land. It was



further submitted that the appellant-defendant did not get the sale-deeds registered even though it was mandatory and that object of the Registration Act could not be defeated by some bifurcation specially when the land is claimed to be the same and between the same parties by merely getting the sale-deeds executed for smaller portions. It is submitted that the appellant-defendant never pleaded any specific date on which the possession was delivered and that in response to his averment where an inference of possession was sought to be given in the reply, the respondent-plaintiff denied the averment and reiterated the claim made in the plaint wherein they had specifically pleaded that they were owners in possession of the said khasra numbers.

An additional argument was raised by the counsel for the appellant that a suit by one co-sharer for possession could not be maintained against trespassers in respect of the entire property without impleading other co-sharers, however, the said submission is unworthy of acceptance as a Full Bench of this Court has held in the matter of *Ajmer Singh Versus Shamsher Singh alias Sher Singh*, reported as *AIR 1984 P&H 58* that a suit by one co-sharer for possession against trespasser in respect of the entire property without impleading other co-sharers was maintainable as it was a suit for joint possession and that each co-sharer is not required to be impleaded as a party for the maintainability of such a suit.

I have heard learned counsel appearing on behalf of the respective parties and gone through the documents available on record.

Counsel for the appellant-defendant has attempted to dislodge the findings recorded by both the courts on the aspect of delivery of possession to the appellant-defendant. He contends that the actual delivery of physical possession of



fairly conceded that the unregistered sale-deeds are scribed in Urdu and that translated copy thereof has not been exhibited on record. He also could not dispute that no application was ever made for leading any additional evidence or proving the translated copy of the unregistered sale-deeds(Exs.DA to DE). He was confronted with the findings recorded by both the courts, from the pleadings and the unregistered sale-deeds, to the effect that possession of the land was to be delivered later. He could not allege any satisfactory explanation as to on what basis the findings recorded by the courts could be held to be incorrect.

He was also confronted with the fact that even at the stage of filing of a first appeal before the Additional District Judge, Faridkot, there was no ground raised to the effect that the finding so recorded about the possession to be delivered later was based on misreading of the unregistered sale-deeds and no attempt was made to adduce any additional evidence to bring on record and prove the translation of the unregistered sale-deeds. No such application under Order 41 Rule 27 CPC was filed before this Court at the time of institution of the appeal or at any point thereafter. It cannot now at this stage be considered that there was any error in the specific findings recorded by both the courts as regards to the recital contained in the sale-deeds pertaining to possession to be delivered later.

Further, it was also recorded by the courts that the construction of the kotha in part 'A' of area in dispute was raised only recently and that the appellant-defendant could not establish delivery of any actual physical possession to him at any point later in time. The burden of being handed over possession lay on the appellant-defendant who intended to protect his possession being lawful and there could have been no presumption as regards the same. A presumption cannot be



delivered at the time of registration of the unregistered sale-deeds in the year 1959 itself. Had it been so, it would have been specifically recorded that the possession has been delivered to the appellant-defendant. Further, merely because the respondents-plaintiffs chose not to initiate contempt proceedings for violation of the interim order does not mean an acknowledgement of a lawful delivery of possession. The burden as regards taking over physical possession of the land lies on the appellant-defendant and the same cannot be inferred as a remote consequence of an action not taken.

Significantly, the local commissioner stepped into the witness box and no objection was put to him as regards his report that the possession was about 5/6 years ago. Even though the case of the appellant-defendant was to the effect that he was put in possession around 26/27 years ago, the construction relied upon him for corroborating his claim did not substantiate the pleading.

The courts thus rightly recorded that the appellant-defendant had taken forcible possession of the suit property after the institution of the suit. In any event, it is also not in dispute that when the sale-deeds are unregistered, the title in the property passes on the delivery of possession and that the failure of the appellant-defendant to establish his possession, it renders the case of the appellant-defendant liable to be disbelieved. Besides, the appellant-defendant never brought the sale-deeds to light since 1959 or sought its implementation in the revenue record. Still further, the courts also noticed that there was a reference of payment of Rs.2000/- but no receipt qua the same has been exhibited on record. Hence, there were multiple instances and deficiencies noticed by the courts which rendered the story put-forth by the appellant-defendant improbable. The claim of the appellant-



defendant as having been settled in possession by the respondents-plaintiffs thus stood belied.

I find that no questions of law more so a substantial question of law arise for determination in the present Regular Second Appeal and the same is based purely on a question of fact. It has been held by the Hon’ble Supreme Court that the findings of fact concurrently recorded by two courts is not to be ordinarily interfered with unless such finding is noticed to suffer from an illegality, perversity, impropriety or gross misappreciation of evidence.

Finding no merit, the present appeal is hereby dismissed for the aforesaid reasons.

April 29, 2024
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No