

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 1044 of 1994 (O&M)

Gulzar Singh and Another
... Appellant(s)

Versus

Kaka Singh
... Respondent(s)

AND

2. Regular Second Appeal No. 1047 of 1994 (O&M)

Gulzar Singh and Another
... Appellant(s)

Versus

Kaka Singh
... Respondent(s)

DATE OF DECISION: 11.03.2024

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vikas Singh, Advocate
for the appellant(s).

Mr. Arun Jindal and Mr. Kanish Jindal, Advocates
for the respondent.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC*

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2. These two connected regular second appeals have been filed by Gulzar Singh and Nirmal, who were the defendants in the first suit and the plaintiffs in another suit filed for the grant of decree of permanent injunction. Hereinafter the parties shall be referred to by their names.

3. Amar Singh son of Chhajju Singh was the owner of two plots measuring 65'x56' and 25'-3"x23'-2", respectively. It is the case of Kaka Singh that Amar Singh entered into an agreement to sell in his favour on 22.12.1979 on receipt of the earnest money of ₹8,000/- and the possession of the plot was delivered in part performance of the agreement to sell. It was also alleged that subsequently, Gulzar Singh and Nirmal Singh have purchased the said property from Amar Singh against payment of ₹4,500/- vide registered sale deed dated 26.12.1988. Kaka Singh has filed a suit for decree of permanent injunction restraining the defendants from interfering in his possession. Gulzar Singh and Nirmal Singh have filed a counter-suit for decree of permanent injunction. Both the Courts below, on appreciation of evidence, came to a firm conclusion that Kaka Singh is in settled possession of the property pursuant to the agreement to sell. Both the Courts below have also relied upon the report of the Local Commissioner who was appointed during the pendency of the suits. It has also been held that Kaka Singh is entitled to protect his possession under Section 53A of the Transfer of Property Act, 1882 (hereinafter referred to as "the 1882 Act"). The learned counsel representing Gulzar Singh and Nirmal Singh has stated that they failed to challenge the correctness of the statement of Kaka Singh that he was delivered possession by Amar Singh.

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with their able assistance, perused the paper-book.

5. The learned counsel representing Gulzar Singh and Nirmal Singh submits that the original agreement to sell has not been produced and the Local Commissioner's report cannot be made basis to decide the possession. He further submits that in the revenue record, the possession of Amar Singh is recorded and Gulzar Singh and Nirmal Singh have purchased the property vide registered sale deed dated 26.12.1988.

6. On the other hand, the learned counsel representing the respondent contends that Kaka Singh is entitled to protect his possession under Section 53A of 'the 1882 Act'. He submits that entry in the register of Scribe, which is signed by Amar Singh acknowledging the receipt of ₹8,000/- on 22.12.1979 pursuant to the agreement to sell proves that the agreement to sell was entered into.

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

8. Section 53A of 'the 1882 Act' entitles the agreement holder to protect his possession which was delivered to him pursuant to the written statement to sell evidencing the delivery of possession in part performance of the agreement to sell. In this case, the execution of the agreement to sell has been proved by producing the entry in the register of the Scribe which is signed by Amar Singh. Though Amar Singh appeared in evidence, however, his evidence has not been believed by both the Courts below. The entry in the revenue record carries rebuttable presumption. Such presumption stands rebutted in view of the entry in the Scribe's note-book which is signed by the

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owner, namely Amar Singh. Both the Courts below have not only relied upon the report of the Local Commissioner but also the evidence including the unchallenged deposition of Kaka Singh. The Local Commissioner, while visiting the property, has reported factual position. The observation made by the Local Commissioner with regard to the possession of Kaka Singh is not binding on the Court, however, the Court is required to take into consideration the factual position. Gulzar Singh and Nirmal Singh have failed to prove their possession. The agreement to sell executed in favour of Kaka Singh is prior in point of time. Hence, Gulzar Singh and Nirmal Singh are bound by the agreement to sell entered into by Amar Singh, their predecessor. Section 53A of the 1882 Act entitles the prospective purchaser to protect his possession in part performance of the agreement to sell.

9. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of fact arrived at by both the Courts below. Hence, both the appeals are dismissed.

10. The miscellaneous application(s) pending, if any, in both the appeals shall stand disposed of.

(Anil Kshetarpal)
Judge

March 11, 2024
“DK”

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