

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2450-1994 (O&M)
Reserved on: 12.03.2024
Date of decision: 18.04.2024

DES RAJ (DECEASED) THROUGH LRS.

..Appellant

Versus

KISHAN CHAND

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S. Khaira, Advocate
for the appellant.

Mr. Dhruv Gupta, Advocate
for respondent.

ANIL KSHETARPAL, J.

1. Brief facts of the case:-

1.1 In this regular second appeal, the plaintiff assails the correctness of the concurrent findings of fact arrived at by the Courts below while dismissing his suit for grant of mandatory injunction for directing the defendant to vacate the premises.

1.2 On 11.08.1997, the regular second appeal was allowed, however, the Supreme Court while allowing Civil Appeal No.241 of 1998, directed the High Court to frame the substantial question of law under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the ‘CPC’) and thereafter, proceed to decide the appeal.

1.3 Subsequently, a five Judge Bench of the Supreme Court in

Pankajakshi (Dead) through LRs Vs. Chandrika and others, (2016) 6

SCC 157, has held that regular second appeals in the States of Punjab,

Haryana and Union Territory, Chandigarh are governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the CPC. Keeping in view the subsequent judgment of the Hon'ble Supreme Court, this Court proceeds to decide the case without framing the substantial question of law.

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

1.5 Sh. Des Raj and Sh. Kishan Chand, the plaintiff and the defendant are sons of late Sh. Tara Chand. Sh. Des Raj filed a suit claiming that he is owner of the house, and he permitted his brother Sh. Kishan Chand to reside in a portion thereof. Upon termination of the license, the plaintiff has sought the relief of mandatory injunction. While contesting the suit, the defendant claims that he has become the owner of the suit property by way of adverse possession. He also claims that the suit property was purchased by their father, Sh. Tara Chand, who constructed the house.

1.6 On perusal of the judgments passed by both the Courts below, it becomes evident that the plaintiff has been held to be the owner of the property by virtue of sale deed dated 19.11.1974. It has come in evidence that the plaintiff after taking loan of Rs.16,000/- from the department namely Post and Telegraph, purchased the property and executed a mortgage deed in favor of the department on 16.11.1976, in order to secure the repayment of loan of Rs.16,000/-. However, both the Courts have held that it was Sh. Tara Chand who had incurred expenditure on the construction of the building and this fact is also stated by Smt. Baawi (DW-3), the mother of the parties. Thus, both the Courts have held that the plaintiff has failed to prove that the possession of the premises as a licensee is not established, and rather he is in possession for more than 12 years,

which has resulted in acquisition of title by way of adverse possession.

2. **Arguments put forth by the learned counsel representing the parties:-**

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

2.2 On the one hand, the learned counsel representing the appellant has submitted that the defendant has failed to prove as to when his permissive possession turned into hostile.

2.3 Per contra, the learned counsel representing the respondent has submitted that Smt. Baawi (DW-3) as well as Sh. Gyan Chand (DW-2), have stated that the expenses incurred on the construction of the property were borne by Sh. Tara Chand and moreover, the plaintiff has failed to prove the date on which the license was created.

3. **Discussion by this Court:-**

3.1 This Court has considered the submissions while analyzing the arguments of the learned counsel representing the parties and perused the requisitioned record.

3.2 As per the finding of fact arrived at by the Courts below, the plaintiff-appellant is the owner of the plot in question. Even if the expenses incurred on the construction were borne by Sh. Tara Chand, still it would not result in divesting the plaintiff's title.

3.3 In this case, it has come on record that the plaintiff purchased the plot from one Sh. Jorawar Singh for a sum of Rs.2,500/- vide registered sale date dated 19.11.1974. In order to prove that he constructed the house, the plaintiff has relied upon 'Ex.P-4', vide which sanction was recorded under Rule 9(a) (i) of the rules regarding grant of house building advanced under the revival of house building scheme. The amount was sanctioned by the Government on 07.09.1976. Vide 'Ex.P-3', the second installment of

Rs.6,400/- was released. The plaintiff has also proved that he executed the mortgage deed Ex.P-5 to secure the payment of the loan. Hence, both the Courts have erred in observing that the loan was taken only to purchase the plot.

3.4 The plaintiff has stated that he has constructed the house. The defendant has not led any documentary evidence to prove that Sh. Tara Chand spent the amount on the construction of the house. The defendant was working as a rickshaw puller since 1976. Hence, he was not in a position to purchase the house.

3.5 In this case, the plaintiff has specifically asserted that he permitted the defendant to reside in the portion of the house because he was at the relevant time posted in Yamuna Nagar, and in some portion of the house, his wife and children were residing, whereas, in the remaining portion the defendant was permitted to reside. The claim of the plaintiff appears to be more plausible. As a matter of fact, the defendant while appearing as DW-1 has admitted that he shifted to the house in dispute after 6 months of his marriage. He failed to disclose how much money was spent on the construction of the house. Thus. it is evident that the defendant being a close relative of the plaintiff was permitted to reside in a portion of the house.

3.6 For proving the adverse possession, the plaintiff is required to prove that when he entered into possession, his possession was adverse or when his permissive possession turned hostile. Mere long possession is not sufficient to hold that the possession is adverse.

4. Decision:-

4.1 Keeping in view the aforesaid facts and discussion, the appeal stands allowed. The judgments passed by both the Courts being erroneous

are set aside. The plaintiff’s suit for mandatory injunction shall stand decreed. The defendant is directed to hand over the possession of the property to the plaintiff forthwith.

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

April 18th, 2024

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No