

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1865 of 2023 (O&M)

Date of Decision: 14.02.2024

Smt. Sulochna Gupta
... Appellant(s)

Versus

Morgan Signatures Towers Private Limited and Another
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Kamal Chaudhary, Advocate
for the appellant(s).

Mr. Sandeep Jain and Mr. Davinder Kumar, Advocates
for the respondents.

Anil Kshetarpal, J.

CM-6657-C-2023

1. For the reasons stated in the application, the same is allowed and delay of 192 days in refiling the appeal is condoned.

RSA-1865-2023

2. 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 157*.

3. In this regular second appeal, defendant No.1 assails the correctness of the judgment and decree passed by the First Appellate Court, which, in turn, has reversed the judgment and decree passed by Trial Court.

4. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The suit property belonged to M/s Jhalani Tools India Private Limited. The proceedings for winding up of that company were filed in the High Court of Delhi in the year 1998. On 16.12.1998, the High Court of Delhi restrained M/s Jhalani Tools India Private Limited from alienating the company's property. Ultimately, the company was wound up and the property of the company was sold by the Company Court which has been purchased by respondent No.1-M/s Morgan Signature Tower Private Limited. Subsequently, respondent No.1 filed a suit for the grant of decree of permanent injunction restraining the defendants from encroaching, trespassing or taking forcible possession of any part of the bigger plot. In the alternative, the plaintiff (respondent No.1) prayed that if defendant No.1 succeeds in encroaching and raising construction during the pendency of the suit, then a decree for mandatory injunction/possession may be passed. The Trial Court has, unfortunately, dismissed the suit. The First Appellate Court, on re-appreciation of the evidence, came to the conclusion that the appellant has no right, title or interest in the property. The appellant claims to have purchased the property vide registered sale deed dated 25.01.2000, from Gian Parkash who claimed to be the special power of attorney holder of M/s Jhalani Tools India Private Limited. It is evident that M/s Jhalani Tools India Private Limited was restrained from alienating the property. Moreover, Section 441 of the Companies Act, 1956, is applicable to the facts of the present case. Hence, the sale, if any in favour of the appellant, is subject to the decision in the company petition.

5. It has come on record that the entire suit property was mortgaged with the financial institution and charge was also registered with the Registrar of Companies. Hence, M/s Jhalani Tools India Private Limited was not empowered to alienate the suit property without permission of the competent authority. Ultimately, the First Appellate Court reversed the judgment and decree passed by the Trial Court.

6. The learned counsel representing the appellant submits that the appellant is in possession of the property. Hence, the suit for injunction was not maintainable. The learned counsel relies upon the judgment passed in *Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs and Others (2008)4 SCC 594*.

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

8. At this stage, it would be appropriate to extract the prayer made in the suit:-

“It is prayed that decree for permanent injunction restraining the defendant no.1 and her henchmen, representatives, associates and others from encroaching, trespassing or taking forcible possession and further restraining them from raising any construction on the open plot of the plaintiff company marked by letters EFGH measuring 12' X 36' which forms part and parcel of the bigger plot no.1 and 2, unit-III marked by letters ABCD as shown in the site plan attached with the plaint situated in NIT, Faridabad Industrial Area and defendant no.2 may also be restrained not to allow the defendant no.1 or any

other person to sub-divide the same and to change the nature of suit property from industrial to commercial, residential, shop, office etc and not to allow them in raising the unauthorised construction in the property of plaintiff. Further in case defendant no.1 succeeds in encroaching and raising construction during pendency of the su: in conclusion with defendant no.2 over the property in dispute or any other portion of the property in possession over the suit property, then a decree for mandatory injunction/possession may kindly be passed in favour of the plaintiff and against the defendants directing them to demolish the construction and to handover the possession to the plaintiff with cost of the suit."

9. It is evident that in the alternative prayer, the plaintiff (respondent No.1) has prayed for relief for possession. The learned counsel representing the appellant contends that the relief of possession can only be granted if it is proved that the appellant came in possession of the property during the pendency of the suit. He submits that in the absence of evidence to this effect, the First Appellate Court has erred in reversing the trial Court's judgment.

10. On a Court question, the learned counsel representing the appellant has failed to draw the attention of the Court to prove the appellant's title. In other words, the learned counsel representing the appellant has failed to challenge the correctness of the findings of the First Appellate Court that there is no title in favour of the appellant.

sought decree for possession of the suit property.

12. Keeping in view the aforesaid facts, no ground is made out to interfere with the findings arrived at by the First Appellate Court. Hence, the present appeal is dismissed.

13. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

February 14, 2024
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No