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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 13th of December, 2024

Naveen Sharma RSA-3031-2024 (O&M)Appellant
Versus

Ashok KumarRespondents

Naveen Sharma RSA-3032-2024 (O&M)Appellant
Versus

Ashok KumarRespondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

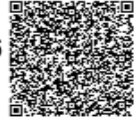
Present : Mr. Divanshu Jain, Advocate
for the appellant.

PANKAJ JAIN, J. (ORAL)

These two appeal arise out of judgments and decrees passed by Courts below whereby the appellant has been mandated to hand-over physical possession of the suit property.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the defendant and the respondent as the plaintiff.

3. Plaintiff Ashok Kumar filed present suit through his attorney Manjit Singh Johal seeking decree of mandatory injunction directing the defendant to hand-over vacant physical possession of the suit property as

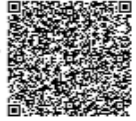


mentioned in the headnote of the plaint. Plaintiff pleaded that he is allottee of the suit property by Chandigarh Administration vide allotment letter dated 5th of February, 1993. Lease deed was executed in his favour vide document dated 4th of July, 2008. Defendant being his nephew was inducted as a licensee. The licence was terminated vide notice dated 1st of May, 2015 asking the defendant to vacate the demise premises. However, despite having served with the notice, defendant failed to vacate the demise premises.

4. Suit was contested by the defendant claiming that his father was inducted as a tenant in the booth, in question, on the monthly rent of Rs.200/-. Later on the demise premises was let out to him on the monthly rent of Rs.300/-. The defendant being tenant cannot be evicted except in terms of East Punjab Urban Rent Restriction Act, 1974 as applicable to Chandigarh.

5. On the basis of the pleadings, suit filed by the plaintiff was put to trial framing the following issues:

- “1. Whether plaintiff is entitled to the relief for mandatory injunction on the basis of contentions made by plaintiff in his plaint ? OPP
2. Whether the suit of the plaintiff is liable to be dismissed on the grounds as mentioned by the defendant in his written statement ? OPD
3. Relief.”

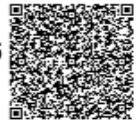


6. Returning finding on issue No.1 in favour of the plaintiff, Trial Court held that the defendant was proved to be a licensee in the premises. However, declined the *mesne profits*. Suit for mandatory injunction was decreed.

7. Both the parties preferred appeals.

8. Lower Appellate Court affirming the finding w.r.t. status of the defendant as licensee, dismissed the appeal filed by the defendant. Prayer of the plaintiff w.r.t. grant of mesne profits was allowed and he was held entitled for mesne profits @ Rs.8,000/- per month w.e.f. 16th of May, 2015 i.e. the date on which the license was terminated till the date of possession.

9. Assailing the impugned judgments and decrees passed by Courts below, Mr. Jain submits that the suit was filed by plaintiff Ashok Kumar through his Power of Attorney Manjit Singh Johal. The power of attorney has been placed on record as Exhibit P-1. He submits that bare perusal of power of attorney would reveal that in fact the same was executed as a sale and the same was also admitted by Ashok Kumar while appearing as PW-1. Ashok Kumar having sold the property was left with no interest or title in the same and, thus, the present suit for mandatory injunction would be barred in terms of Section 41(j) of Specific Relief Act, 1963. He further submits that the Power of Attorney was executed as a camouflage to the sale deed owing to a bar in the lease deed executed by U.T., Administration in

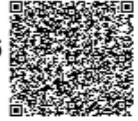


favour of plaintiff Ashok Kumar whereby he was barred from transferring his rights in the property for a period of 15 years.

10. I have heard counsel for the appellant and have carefully gone through records of the case.

11. It has come on record that still in the records maintained by the Estate Officer, the property stands in the name of plaintiff Ashok Kumar. The fate of the *lis* hinges upon answer to the question '*whether power of attorney Exhibit P-1 can be treated as sale by plaintiff Ashok Kumar in favour of Manjit Singh Johal?*' The issue is no more *res integra* and has been answered by Supreme Court in the case of **Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana and another, (2012) 1 SCC 656** observing as under:

"15. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in *Asha M. Jain v. Canara Bank, 2002(1) RCR (Civil) 543, 94 (2001) DLT 841*, that the "concept of power of attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.



16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.”

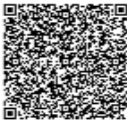
12. The aforesaid being legal situation, this Court does not find that on the strength of power of attorney, it can be held that the plaintiff has lost personal interest in the property and can be barred from claiming injunction invoking Section 41(j) of Specific Relief Act, 1963. So far as finding w.r.t. appellant being licensee and his liability to pay *mesne profits* is concerned, the same are pure findings of fact which are beyond the scope of Second Appeal.

13. In view of above, finding no merit in the present appeals, the same are ordered to be dismissed.

14. Pending application(s), if any, shall also stand disposed off.

RSA-3031-2024 (O&M)
RSA-3032-2024 (O&M)

2024:PHHC:166826



15. A copy of this order be kept on the file of other connected case.

December 13, 2024
Dpr

(Pankaj Jain)
Judge

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