



In the High Court of Punjab and Haryana, at Chandigarh

Execution Second Appeal No. 188 of 2016 (O&M)

Date of Decision: 24.03.2025

Padam Kumar Aggarwal

... Appellant(s)

Versus

Administrator, Municipal Corporation, Faridabad and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. A.P.Bhandari, Advocate
for the appellant(s).

Mr. Baldev Raj Mahajan, Senior Advocate
with Mr. Prateek Mahajan and Mr. Kunal Soni, Advocates
for the respondent No.1.

Anil Kshetarpal, J.

1. The appellant before this Court is respondent No.1, a transferee of property from Mohamad Umar alias Bhullan, who filed a suit for permanent injunction claiming that he is owner in possession of a plot measuring 252 square yards situated in Mohalla Mirza Beg, presently known as “Mohalla Baniawara, Ballabharh”. The suit was filed against the Faridabad Complex Administration, Faridabad. The Court held that the plaintiff has failed to prove his ownership, however, decree for permanent injunction was passed in favour of the plaintiff restraining the defendant from illegally and forcibly dispossessing him without any due process of law, which was upheld in first appeal as well as in the second appeal.

2. The appellant claims that he has purchased the property from Mohammad Umar alias Bhullan. He filed a Contempt Petition bearing No.

2169 of 2011 which was disposed of by this Court by relegating him to the execution proceedings under Order XXI Rule 32 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”). Ultimately, he filed an execution petition in which the objections were filed by Municipal Corporation, Faridabad, the successor-in-interest of Faridabad Complex Administration. The objections were allowed and the execution petition was dismissed on the ground that the appellant has failed to prove that he was forcibly dispossessed. The first appeal filed by the appellant has also been dismissed.

3. During the course of these proceedings, another important development has taken place. The Municipal Corporation, Faridabad, filed a suit challenging the sale deed in favour of the appellant. The suit was dismissed by the Trial Court, however, the First Appellate Court declared that the appellant is not entitled to the ownership of the property because Mohammad Umar alias Bhullan was not the owner. The Court also held that the defendants including the appellant herein are restrained from interfering into the possession of the property and the suit property is a *nazool land* which vests in the State and its management vests in the Municipal Corporation. The operative part of the finding of the First Appellate Court is as under:-

“25. Taking the case from another angle, Padam Singh has tried to rely upon Ex.D3 and has alleged that same is sale deed qua the property in the year 1914 but if the version of the witness, who has appeared in the witness box as DW3 Asha Ram (retired Patwari) is perused, he has admitted that there is

no date mentioned in Ex.D3 and Ex.D3 does not bear any khasra number. Ex.D3 does not contain the name of person who had allegedly scribed it. This fact means that defendant has failed to connect Ex.D3 with the suit property and therefore, the averment of the defendants that Alladiya has allegedly purchased this property from Amin for consideration of 18/- in March 2014 is said to be without any basis. ₹ Ld. Counsel for the defendant has relied upon Prem Sagar Vs. Darbari Lal and another 2000 HRR 233, Murti Shri Gopal Ji Maharaj Vs. Data Ram and others 1991(2) SLJ 934 and Vidhyadhar Vs. Mankikrao and another 1999 AIR 1441 (Supreme Court). The ratio of law relied upon by the counsel for the defendant shall not aid in establishing the right of the defendant over the property because if defendant asserts his possession over the property, then he has to establish the same by leading cogent evidence. The defendants have failed in proving either their ownership or possession over the property. He has to prove his better title over the property. Ironically the vendor i.e. defendant no.3 from whom the defendant no.1 has purchased the property was not having any ownership rights over the property and even qua the aspect of possession, the defendant no.1 had filed an execution based upon decree dated 29.2.1996 but the same has been dismissed by the Executing Court and even by the Appellate Court. Therefore, in these circumstances, this Court is of the opinion that the impugned judgment and

decree are liable to be modified to the extent that although ownership rights cannot be given in favour of the plaintiff qua the suit property as Nazool land vests in State Government but the impugned judgment and decree dated 24.8.2006 and the sale deed dated 14.3.2008 are liable to be set aside and defendants are liable to be restrained from interfering in the property in any manner.

26. Therefore, compromise decree dated 24.8.2006 and sale deed dated 14.3.2008 based upon compromise decree is not binding on the rights of the plaintiff and the defendants have no right and title qua the suit property in any manner. With these modifications the present appeal is partly allowed and the judgment and decree passed by the learned Trial Court is partly set aside qua the extent of relief of setting aside judgment and decree and sale deed. Qua the extent of the plaintiff claiming ownership over the suit property, the present appeal stands dismissed. Decree sheet be prepared accordingly. Lower court record along with copy of this judgment be sent back, whereas appeal file be consigned to record room after due compliance.”

4. The learned counsel representing the appellant has failed to draw the attention of the Court to any appeal filed by the Appellant or Mohammad Umar alias Bhullan against the judgment dated 24.03.2019. The learned counsel representing the Municipal Corporation has submitted that this judgment has become final.

5. Keeping in view the aforesaid development, no further order

can be passed in the present appeal because now there is a restraining order against the appellant from interfering into the possession of the Municipal Corporation, Faridabad, which is utilizing the property as a park. Accordingly, the appeal is dismissed.

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

(Anil Kshetarpal)
Judge

March 24, 2025

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No