

(1998) 09 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular First Appeal No. 1627 of 1979

Punjab State

APPELLANT

Vs

Harnek Singh and Others

RESPONDENT

Date of Decision: Sept. 25, 1998

Acts Referred:

- Transfer of Property Act, 1882 - Section 41

Citation: (1999) 121 PLR 787

Hon'ble Judges: V.K. Bali, J

Bench: Single Bench

Advocate: Charu Tuli, Dy. Advocate General, for the Appellant; M.L. Saggar and Arun Jain, for the Respondent

Final Decision: Dismissed

Judgement

V.K. Bali, J.

The challenge herein is to judgment and decree passed by Sub Judge 1st Class, Ludhiana dated 22.3 1997 vide which suit for possession filed by respondent Harnek Singh son of Jiwan Singh was decreed and the properties subject matter of dispute fully detailed in the heading of the plaint were ordered to be handed over to the plaintiff-respondent.

2. The brief facts of the case reveal that Harnek Singh son of Jiwan Singh brought a suit for possession of land measuring 1-10-13 pukhta and building constructed marked A and B respectively thereon shown in red in the plan attached with the plaint and bounded as mentioned in the headnote of the plaint situated at village Taraf Piru Bauda, Ludhiana and some other properties in village Taraf Piru Bauda, Mohalla Dera Kalsian, Gill Road, Tehsil and Distt. Ludhiana. The burden of the plaint was that the land described above was a part of Khasra No. 2820/112 constituting a part of bigger parcel of land measuring 2 Bighas 18 Biswas and 7 Biswansis as per Jamabandi for the year 1941-42 and that father of Jiwan Singh had purchased two

pieces of land from Syed Hamid Ali and Murad Baksh residents of Ludhiana vide two separate registered sale deeds dated 28.8.1942 and 18.8.1942 respectively. Thereafter father of the plaintiff constructed a building, which has been shown in red colour in the plan, on the plots in dispute and started residing in the property as its owner. On the death of his father in 1943-44, the plaintiff inherited his property including the land in dispute and mutation in this regard was also sanctioned in his favour and he remained in its possession till 30.11.1962 on which date he was dispossessed by Suba Singh, the then Deputy Commissioner of Ludhiana. It was further pleaded that the plaintiff was dispossessed from the land under the cover of two gifts deeds which are said to have been made by Shri Narain Singh alias Sant Kalsianwala predecessor-in-interest of defendant No. 3 on 5.11.1961 and 21.4.1973 in favour of Governor of Punjab. The plaintiff challenged these being illegal, void and inoperative.

3. The matter was contested only on the ground that father of the plaintiff was only a benamidar and Shri Narain Puri Sant Kalsianwala was the real owner of the same. He had purchased this property ostensibly in the name of the plaintiff and as a matter of fact it is Shri Narain Puri Sant Kalsianwala who was the real owner. On the pleading of the parties the learned trial Judge framed the following issues:

1. Whether Shri Narain Puri had purchased the land in dispute vide two sale deeds dated 18.8.1942 and 28.8.1942 through his Sewadar Jiwan Singh, father of the plaintiff by contributing money to him as benami in the name of Jiwan Singh i.e. Jiwan Singh was an ostensible owner while the real owner of the land was Narain Puri and later on Narain Puri had constructed massive building on that purchased land? OPD.
2. Whether Naraia Puri has all along been in possession of the land and he constructed the building? OPD.
3. If issue No. 1 is not proved, whether Narain Puri was in adverse possession of the land and the construction for more than 12 years had become full fledged owner? OPD.
4. Whether Narain Puri was fully competent to make the gift of the property in suit in favour of the Punjab Government or the Governor of Punjab? OPD.
5. Whether the plaintiff has been in possession of the property in suit land and was dispossessed illegally on 30.11.1962? OPP.
6. Whether the suit is within time? OPP.
7. Whether the suit is properly valued for purposes of court fee and jurisdiction? OPP.
8. Whether the suit is barred by principles of res judicata? OPD.

9. Whether a valid notice u/s 80 CPC was served by the plaintiff on the defendants before the filing of the suit? OPP.

10. Relief"

4. After resultant trial, suit of the plaintiff was decreed and it is against this judgment and decree that the present appeal has been filed by the State of Punjab.

5. I have heard Mrs. Cham Tuli, DAG. Punjab and Mr. M.L Saggar who represents the respondents and with their assistance carefully gone through the records of the case. A plea of benami depends upon as to by whom the consideration amount was paid. What was the intention of the parties at the time of purchase and their subsequent conduct The respondent-State of Punjab but for leading some oral evidence to show that plaintiff's father was only a benamidar did not endeavour to prove the said plea by any other evidence. A firm finding of fact has been recorded and which could not be challenged even remotely during the course of arguments that the father of the plaintiff had made construction on the property in dispute and that either at that time or at the time when mutation was sanctioned or even at the time when the father of the plaintiff had sold a part of the property, Shri Narain Puri Sant Kalsianwala had not objected to the same. Plea of defendants that Shri Narain Puri Sant Kalsianwala had renounced the world and, therefore, could not object to what was being done by the father of the plaintiff was negated on the basis of findings which were recorded in earlier litigation culminating in the judgment of Civil Court wherein it was held that Shri Narain Puri was an ordinary person having not renounced the world end was looking after himself and other properties owned by him. Further Shri Narain Puri had himself in the suit referred to above stated that he had not renounced the world. Nothing at all has been argued from which it may appear that the judgment and decree passed by the trial Judge needs any interference in first appeal filed by the State of Punjab.

6. This appeal is consequently, dismissed leaving, however, the parties to bear their own costs.