(2014) 03 P&H CK 0238

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1191 of 2014 (O&M)

Jarnail Singh		APPELLANT
	Vs	
Daljit Singh		RESPONDENT

Date of Decision: March 3, 2014

Acts Referred:

- Evidence Act, 1872 - Section 115
- Transfer of Property Act, 1882 - Section 53-A

Citation: (2014) 175 PLR 56

Hon'ble Judges: Rakesh Garg, J

Bench: Single Bench

Advocate: Parteek Pandit, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Rakesh Garg, J.

Plaintiff-respondents filed instant suit for possession of the plot in dispute through their attorney Bachitar Singh, on the averments that plaintiffs along with defendants No. 2 and 3 (now respondents No. 8 and 9) are the owners of the suit property and defendant No. 1 i.e. appellant had taken illegal possession of the same a few months back in the absence of the plaintiffs and has raised some construction thereon. Hence the necessity arose to file the suit. Appellant contested the suit by filing written statement stating that the suit property in question was originally owned and possessed by Tarlochan Singh and the same is reflected in the jamabandi for the year 1998-99 and after his death, plaintiffs No. 6 and 7 (now respondents No. 6 and 7) have sold the property in question to him, vide agreement to sell dated 24.09.2003 on payment of full and final consideration of Rs. 12,000/- and had delivered the possession to him and appellant further averred that property was in the shape of a pond and has raised a construction in the year 2003. Since then, the plaintiffs have not raised any objection to the same and the suit was liable to be dismissed.

2. Parties led evidence in support of their respective case. After hearing learned counsel for the parties and considering the evidence on record, the trial Court decreed the suit of the plaintiff-respondents vide judgment and decree dated 25.4.2012 observing as under:-

15. From the above discussed evidence it is evident that defendant No. 1 is alleging one agreement to sell dated 24.09.2003 Ex. D.W. 1/1 in his favour and is claiming himself to be owner of the property in dispute on the basis of said agreement to sell. On the other hand, the plaintiffs are claiming themselves to be the owner of the suit property on the basis of title as they are recorded as owners in possession of the suit property in the revenue record, i.e. Copy of jamabandi for the year 2008-09 Ex. PX. It is evident that the plaintiffs are recorded as owners in possession of the property in dispute in the revenue record and on the other hand, defendant is alleging himself to be the owner of the property in dispute on the basis of an unregistered agreement to sell allegedly executed by plaintiff Nos. 6 and 7 in his favour. The learned counsel for defendant No. 1 has vehemently argued that the plaintiffs are estopped from claiming the possession of the property in dispute because plaintiff No. 6 and 7 are the legal heirs of Tarlochan Singh who was recorded as owner in possession of the property in dispute at the time of its purchase in the revenue record. They had themselves sold the same to defendant No. 1. In support of his contentions he had placed reliance upon 2009 (1) R.C.R. (Civil) 41 (P & H) (Supra) in which it has been held that where a vendor had sold the property and had received the entire consideration and possession has also been delivered to the vendee. However, the sale deed was not registered. Unregistered sale deed does not confer the title, but vendor estopped from re-claiming possession on the ground that there was no valid sale deed. Rule of estoppel contained in Section 115 of the Evidence Act is clearly attracted. But the above cited law is of no help to defendant No. 1 because the Hon''ble Supreme Court in Recent Case Reported as Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another, has held that no immovable property can be legally transferred or conveyed through a general power of attorney, agreement to sell or Will. Immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of sales through general power of attorney, agreement to sell or Will neither convey title nor create any interest in an immovable property. They cannot be considered as deed of title, except to the limited extent of Section 53-A of the Transfer of Property Act. Such transactions cannot be relied upon or made on the basis for mutations in Municipal or Revenue records. Therefore, keeping in view the above cited law of the Hon''ble Supreme Court the unregistered agreement to sell relied upon by defendant No. 1 Ex. D.W. 1/1 does not carry any value in the eyes of law.

16. Even if it is believed that plaintiffs No. 6 and 7 have executed the said agreement to sell in favour of defendant No. 1, they had no right to execute the alleged agreement on behalf of the other legal heirs of deceased Tarlochan Singh. It has

come on record that deceased Tarlochan Singh was survived by plaintiffs No. 6 and 7 and defendants No. 3 and 4 namely Jaswinder Singh and Surinder Kaur. Even correction was made in the revenue record by way of Fard Badar Ex. PZ in which the mutation of inheritance of deceased Tarlochan Singh was sanctioned in the name of his all four legal heirs. Moreover, there is nothing on record to show that the khasra number 502(0-2) was under the exclusive owner and in possession of deceased Tarlochan Singh. The copy of Jamabandi for the year 1988-89 Ex. PX shows that the land in dispute was earlier owned by Bhag Singh and after his death the same has been mutated in the name of Tarlochan Singh and plaintiffs in equal shares. Meaning thereby the plaintiffs are still recorded as co-owners of the property in dispute. Merely, on the basis of unregistered agreement to sell defendant No. 1 cannot claim himself to be the owner of the property in dispute. The said agreement in no terms can be considered as a document of title.

17. Hence from the above discussion, I have reached the conclusion that plaintiffs are entitled to get the vacant possession of the suit property being co-owners of the same. Accordingly, this issue is decided in favour of the plaintiffs and against the defendants.

3. Appeal filed by the appellant against the aforesaid judgment and decree of the trial Court before the First Appellate Court was also dismissed vide impugned judgment and decree dated 07.12.2013.

4. Still not satisfied, defendant No. 1 has filed the instant appeal submitting that the Courts below have failed to appreciate that the appellant is in possession of the suit property on the basis of written agreement dated 24.09.2003 executed by respondents No. 6 and 7 and had paid the entire sale consideration and thus, he was a bona fide purchaser of the suit property and his possession was protected by Section 53-A of Transfer of Property Act, 1882(for short ''the Act''). However, the Courts below have failed to consider the said provision in its true perspective and thus, findings of the Courts below are erroneous and perverse and therefore, following substantial questions of law arise in this appeal:-

i. Whether in the facts and circumstances of the present case the judgment and decree passed by the learned trial Court and affirmed by the learned lower Appellate Court are perverse, illegal and therefore, unsustainable in the eyes of law?

ii. Whether the Courts below have failed to construe the provisions of Section 53-A of Transfer of Property Act, 1882 and erred in holding that the defendant/appellant is not entitled to the benefit thereof?

iii. Whether the plaintiffs were estopped from filing the present suit on account of their act and conduct and whether the suit of the plaintiffs is barred u/s 115 of Indian Evidence Act?

iv. Whether the Courts below could have decreed the suit of the plaintiffs without the plaintiffs themselves entering into the witness box in support of the averments made in the plaint solely on the basis of testimony of power of attorney?

5. I have heard learned counsel for the appellant and perused the impugned judgments and decrees of the Courts below.

6. Hon''ble the Supreme Court in recent case reported as Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another, has held that no immovable property can be legally transferred or conveyed through a general power of attorney, agreement to sell or Will. Immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Thus, the aforesaid agreement to sell cannot be considered as deed of title. Moreover, trial Court has found that plaintiffs No. 6 and 7 were not competent to execute the agreement to sell in question as they were not exclusive owners of the suit property.

7. Admittedly, appellant-defendant is in possession of the suit property on the basis of agreement to sell dated 24.9.2003 alleged to be executed by plaintiff/respondents No. 6 and 7. However, it is well settled that agreement to sell unless enforced will not confer any title and therefore, appellant has no claim to retain his possession.

8. Faced with this situation, counsel for the appellant has vehemently argued that in view of the provisions of Section 53-A of the Act, appellant was put in possession by plaintiffs No. 6 and 7 in pursuance of the agreement to sell in question and therefore, his possession is protected u/s 53-A of the Act. However, a perusal of the record would show that appellant has been found to be in unauthorized possession over the disputed khasra.

9. Not only this, appellant cannot retain possession of the suit property by invoking the provisions of Section 53-A of the Act because he has failed to take any step in furtherance of the performance of the impugned contract between him and plaintiffs No. 6 and 7. Moreover, there is no such averment in the written statement to the effect that he was ready and willing and is still ready and willing to get the sale deed executed on the basis of the agreement to sell dated 24.09.2003.

10. Not only this, his conduct further dis-entitles him for protection u/s 53-A of the Act and he has failed to get sale deed registered in his favour in pursuance of agreement to sell dated 24.09.2003 till date.

11. In view of the aforesaid, this Court finds no merit in this appeal. No substantial question of law, as raised, arises in this appeal.

Dismissed.