

Court of Civil Judge (Junior Division), Ganaur

Civil Suit No. RBT- 86 of 2009
Computer I.D. No. 060800036982009
Date of Institution: 12.11.2009/17.09.2013
Date of Decision: 15.01.2014

Sukhbir Singh son of Sh. Sultan Singh, resident of Ganaur Mandi, Tehsil Ganaur, Distt. Sonapat.

....Plaintiff

Versus

Smt. Kamlesh wife of Sh. Ram Mehar son of Sh. Banwari Lal, resident of village Teha, Tehsil Ganaur, Distt. Sonapat.

....Defendant

Suit for Permanent Injunction

Present: Sh. Mukesh Kaushik, Advocate for the plaintiff.
Sh. R.A. Gautam, Advocate for defendant.

JUDGMENT:

1. Seeking relief of permanent injunction against the defendant, plaintiff has filed the present suit imploring that defendant be restrained from encroaching upon his house measuring 75 sq. yards which is bounded as: East: House of Ramphal, West: House of Om Parkash, North: Gali sare-aam and South: House of Kanshi and situated within the revenue estate of village Barot, Tehsil Ganaur, Distt. Sonapat (hereinafter referred to as 'the suit property').
2. It is pleaded in plaint that the suit property was purchased by the plaintiff in the name of Smt. Padmawati i.e. wife of the plaintiff (hereinafter referred to as 'the deceased') vide registered sale-deed bearing No. 1462 dated 10.03.1992. Smt. Padmawati died in the year 1993 and after her death, the plaintiff became responsible for all her affairs, it is alleged. It is further averred by the plaintiff that after the sale of the suit property,

the defendant has no concern, right, title or interest in it but she is trying to encroach upon the suit property with the aid of some anti social persons which forced the plaintiff to file the present suit.

3. Notice of the suit was given to the defendant. She filed detailed written statement resisting plaintiffs' claim on grounds of maintainability, cause of action, *locus-standi*, concealment of facts etc. On merits, the defendant contended that she did not sell the suit property to the deceased vide sale deed No. 1462 dated 10.03.1992 and the defendant herself is in lawful physical possession of the suit property. Defendant alleged that the sale-deed relied upon by the plaintiff is a fake document. It is further claimed that the defendant is residing in the suit property since long, thus, there is no question of plaintiffs taking possession of the same.
4. After going through pleadings of parties, the court framed following issues:
 - a. Whether the plaintiff is entitled for the relief of permanent injunction, as prayed for? OPP
 - b. Whether suit of plaintiff is not maintainable in the present form? OPD
 - c. Whether plaintiff has concealed material facts from the court? OPD
 - d. Whether plaintiff is estopped by his own act and conduct to file the present suit? OPD
 - e. Whether plaintiff's suit is bad for non-joinder of necessary party? OPD
 - f. Relief.
5. In order to prove his case, the plaintiff deposed as PW-1 and Sh. Ram Niwas, registry clerk from office of Sub-Registrar, Ganaur was examined as PW-2. In addition to it, the plaintiff also relied upon following documents i.e. site-plan (Ex. P-1), certified copy of registered sale deed

no. 1462 (Ex. P-2) and copy of General power of Attorney (for short 'GPA') Ex. P-3 (original seen and returned).

6. PW-1, in his examination-in-chief deposed on affidavit Ex. PW-1/A and reiterated contents of the plaint. In his cross-examination, PW-1 denied all suggestions put to him and remained firm on his stand. He deposed that the deceased has been survived by him, their 5 sons and 3 daughters but all children have appointed him their attorney holder in regard to the suit property vide registered GPA dated 12.04.1996 (Ex. P-3). Further, he has filed a contempt petition against the defendant for willful disobedience of interim order passed by the court in the present case, PW-1 stated. He also testified that the suit property comprised of three rooms but he had demolished two rooms with a view to re-construct the same.
7. Sh. Ram Niwas, registry clerk, office of Sub-Registrar, Ganaur appeared as PW-2 and proposed to prove registration of sale-deed Ex. P-2. He stated that the registration is correct as per record but the sale deed was not executed or registered in his presence.
8. The defendant, on the other hand, got examined Sh. Surender as DW-1 and herself deposed as DW-2. Defendant also relied upon certain documents i.e. certified copy of sale deed no. 173 dated 09.05.1991 (Ex. D-1), copy of jamabandi for the year 2006-2007 (Ex. D-2), copy of civil no. 201/1991 and judgment dated 16.03.1991 (Mark- A to B), copy of jamabandi for the year 1991-1992 (Mark- C) and certified copy of deposition of Sukhbir Singh (plaintiff herein) in contempt proceedings arising out of the present civil suit (Mark- E).

9. In his examination-in-chief, DW-1 deposed on affidavit Ex. DW-1/A and restated facts pleaded in the written statement. During cross-examination, this witness stated that he was neighborer of the defendant and defendant's daughter had told him about the present case. However, he did not see any document of ownership in favor of the defendant related to suit property, DW-1 admitted.
10. Similarly, DW-2 i.e. the defendant also reiterated contents of the written statement in her affidavit Ex. DW-2/A. However, this witness remained firm on her stand despite cross-examination and stated that she is in possession of the suit property.
11. Ld. Counsel for plaintiff argued that deposition of PWs and the documentary evidence placed on record by the plaintiff proves that the suit property was purchased by the deceased and at present it is in possession of the plaintiff and his children, being legal heirs of the deceased.
12. On the other hand, Ld. Counsel for defendants argued that as per section 15 of the Hindu Succession Act, property of a Hindu female dying intestate is succeeded by his children and husband simultaneously, as class one heir but the plaintiff did not implead his children as necessary party, thus, suit is liable to be dismissed. Further, the power of attorney (Ex. P-3) is not sufficient to allow the plaintiff to appear and represent other necessary parties before the court, he argued placing reliance on T. C. Mathai V. Pri. Distt. & Sessions Judge, 1999 (2) LJR 552 (Ker.). In addition, it is submitted that plaintiffs have failed to prove their possession over the suit property, therefore, the suit is

liable to be dismissed as laid down in Bihari Lal & Ors. V. Bihari Lal, 2011 (4) LJR 772 (PH).

13. I have heard the rival submissions, appreciated the evidence brought on record and studied the case law cited at Bar. My issue-wise findings are as follows:

ISSUE No. (a):

Onus to prove this issue was on the plaintiff. Plaintiff claimed that the suit property was purchased by him in the name of his wife vide registered sale deed Ex. P-2 and the defendant had sold it to him for a lawful sale consideration. Defendant, however, contended that the sale deed Ex. P-2 is a fake document. In order to prove this averment, the plaintiff himself deposed as PW-1 and got examined registry clerk from the office of Sub-Registrar, Ganaur as PW-2 who proved factum of registration of the deed.

As per sec. 61 of the Indian Evidence Act, contents of a document may be proved either by primary evidence or secondary evidence. Further, as per sec. 77 of the Evidence Act, certified copy a public document issued by a public officer having custody of such document may be produced in proof of the contents of such public document. In the case hand, documents Ex. P-2 is certified copy of the original issued by Sub- Registrar in compliance of sec. 76 of the Evidence Act, therefore, admissible into evidence to prove the contents of this document. Therefore, argument of Ld. Counsel for defendant that document Ex. P-2 cannot be read into evidence is not tenable.

Moreover, both parties are claiming their possession over the suit

property but against each other. Except oral testimony of DWs, defendant has brought no other evidence to prove her possession over the suit property. Also, defendant has not placed on record any other document to prove her ownership on the date of filling of suit. Whereas, document Ex. P-2 proves ownership of the plaintiff and in case, plaintiff proves his title, but not any act of possession and the defendant also fails to prove his possession, the presumption that possession follows title will come into play. Necessary analogy can be drawn from 'Navalram Laxmidas Devmurari V. Vijayaben Jayvantbhai Chavda', AIR 1998 Guj 17.

During the course of arguments, Ld. Counsel for the defendant submitted that even if document Ex. P-2 is taken as proved, it shows that the plaintiff is not in possession of the suit property. It is mentioned in the sale-deed itself that the suit property is in possession of a tenant named Sushil Kumar. In reply to this, it is pointed out by Ld. Counsel for the plaintiff that said Sh. Sushil Kumar is son of the plaintiff and he has authorized the plaintiff to deal with the suit property. Argument of Ld. Counsel for the defendant is self-contradictory because on one hand, he pleads possession of the defendant but at the other, he admits that the defendant is not in possession of the suit property. Admission is the best evidence.

Further, defendant has relied upon testimony of the plaintiff given in contempt proceedings (Mark-E) arising out of the present case wherein he stated that the defendant and her children had demolished two rooms of the suit property. Armed with this statement of the plaintiff, Ld. Counsel for the defendant tried to purport that defendant has

regained possession of the suit property. However, this document causes another dent in defendant's case because it proves the apprehension that the defendant has been trying to dispossess the plaintiff from the suit property. Thus, it is held that plaintiff has discharged the onus and proved issue no. (a) in his favor. Accordingly, issue no. (a) is decided in favor of the plaintiff and as against the defendant.

14. **ISSUE (b) to (e):**

Onus to prove these issues was on the defendant. Issue no. (c) and (d) were not pressed by the defendant. However, in support of issue no. (b) and (e), Ld. Counsel for the defendant argued that after the death of deceased, all her legal heirs have become co-sharers in the suit property but plaintiff has not impleaded other co-sharers as party in the present case and mere holding of power of attorney on behalf of other co-sharers does not empower the plaintiff to litigate on their behalf.

This argument of Ld. Counsel for the defendant has no substance mainly for two reasons. First, present suit is a suit for permanent injunction against a stranger and not between *inter-se* co-sharers. Every co-sharer has a right to protect his interest as well as interest of other co-sharers in the suit property against a stranger. It is not case of the defendant that suit property is partitioned among the plaintiff and other legal heirs of the deceased. Second, plaintiff is husband of the deceased and father of her other legal heirs. Besides, he holds a general power of attorney on behalf of other legal heirs of the deceased i.e. Ex. P-3 which was executed much prior to the filing of the present case whereby he has been authorized to do all such acts which are necessary to protect the suit

property. In this view of the matter, this court is clearly of the opinion that a suit for injunction of the present description is maintainable in law. Accordingly, issue no. (d) and (e) are decided against the defendant and in favor of the plaintiff.

15. **RELIEF:**

As a sequel to the findings given above, this court is of the considered view that the plaintiff has proved his case to the satisfaction of this court, therefore, suit of plaintiff is decreed. Defendant is restrained from encroaching upon or interfering into plaintiff's possession over the suit property in any manner whatsoever. Interim applications, if any, stands disposed of accordingly. No order as to cost. Decree sheet be prepared accordingly and file be consigned to records after due compliance.

(VIKRANT)
Civil Judge (Junior Division)
Ganaur, 15.01.2014

Note: All pages of this judgment have been checked and signed by me.

(VIKRANT)
Civil Judge (Junior Division)
Ganaur, 15.01.2014

Present: Sh. Mukesh Kaushik, Adv. For the plaintiff.
Sh. R. A. Gautam, Adv. for the defendant.

Vide separate judgment of even date dictated directly on the computer, the suit of the plaintiff is decreed. No order as to cost. Decree sheet be prepared accordingly and file be consigned to the record room after due compliance.

(VIKRANT)
Civil Judge (Junior Division)
Ganaur, 15.01.2014