

Kapoor Singh Vs. Kartar Singh
CNR No. HRRH02-001071-2015

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**IN THE COURT OF SEEMA(UID No. HR0387), CIVIL JUDGE(JR. DIVN.),
ROHTAK**

CIS No. 468 of 2015

Civil Suit No. RBT 229 of 2015/2017

Date of Institution: 07.05.2015/09.05.2017

Date of decision: 16.01.2018

Kapoor Singh son of Sh. Inder Singh son of Sh. Akhe Ram, R/o Village Gudhan Distt.
Rohtak, Now R/o House No. 35, Partap Chowk, Delhi Cantt.

.....Plaintiff

Versus

Kartar Singh son of Sh. Inder Singh son of Sh. Akhe Ram, R/o Village Gudhan Distt.
Rohtak, Now R/o H.No. 119, Suresh Nagar near Omaxe City, Rohtak

.....Defendant

Suit for possession

Presence: Mr. Deepak Sethi, counsel for the plaintiff
Mr. V.S.Rathi, counsel for the defendant

JUDGMENT:

1. Vide this judgment, I shall dispose off a suit filed by the plaintiff against defendant for possession of suit property as detailed in para No. 2 of this judgment.

2. Brief facts of the plaint are that plaintiff is owner of property plot measuring 766.75 square yards i.e. plot No. 12 Min measuring 472¼ square yards and Min measuring 294½ square yards purchased vide sale deed bearing No. 3928 dated 14.08.2000 and vide sale deed bearing No. 3927 dated 14.08.2000 respectively, situated near Naya Power House Northern Bye pass Road, Rohtak. The defendant is brother of plaintiff and is having a plot which is situated towards northern side of the property of the plaintiff and defendant has constructed four shops on his property. Plaintiff is serving

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as colonel in army, so, he usually remained posted at distant places. Defendant took undue advantage of the absence of plaintiff and illegally occupied the suit property and constructed a rasta and a shed in the suit property and started doing his business of car repairing in the name & style of M/s Shakti Motors. In 2014, when plaintiff came to Rohtak and visited the suit property, then he came to know about the misdeeds committed by defendant against suit property. Thereafter, plaintiff requested the defendant to vacate the illegal possession and defendant assured to do the same but till date, he has not vacated illegal encroachment on the suit property. Hence, this suit is filed.

3. On notice, written statement was filed by the defendant wherein preliminary objections with respect to non maintainability, no cause of action and false suit has been filed by the plaintiff against defendant were taken. On merit, it is stated that Sh. Balbir Singh and Smt. Savitri Devi agreed to sell the suit property to defendant for a sale consideration of Rs. 16,80,000/- out of which amount of Rs. 2,00,000/- was paid as earnest money, in consideration of which, said persons got executed an agreement to sell and receipt dated 14.02.2000 and it was also agreed that sale deed would be executed upto 14.08.2000. Thereafter, defendant paid an amount of Rs. 4,00,000/- on 29.04.2000, Rs. 2,50,000/- on 29.07.2000 and Rs. 7,70,000/- on 13.08.2000. So, defendant has paid the entire sale consideration except Rs. 60,000/- to said persons. Balbir Singh signed the receipt in presence of witnesses for himself and on behalf of his wife. Plaintiff being elder brother advised defendant to get sale deed executed in parts to save stamp duty and by following the instructions of the plaintiff, defendant got executed different sale deeds and also requested plaintiff to present physically when same is agreed to be executed. Plaintiff took benefit of innocence of defendant and got his name inserted in the sale

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deeds as owner. The original sale deed are with the defendant and answering defendant is paying the house tax of the suit property and electricity meter is also installed in the name of defendant. The defendant is owner in possession of suit property and now, this suit is filed by the plaintiff out of greed.

4. Thereafter, replication was filed by plaintiff wherein all the averments made by the defendant in his written statement were denied and the contentions made in the plaint were reiterated. It is further stated that plaintiff made the payment of Rs. 16,80,000/- with respect to suit property and for that purpose, he withdrew certain amount from his bank account and took friendly loan. It is further stated that as plaintiff was posted at Jammu & Kashmir, so, he asked his brother to enter into an agreement to purchase the suit property on his behalf. Thereafter, plaintiff came to Rohtak and paid the entire sale consideration to vendor and resultantly, sale deed was executed in his favour. The sale deeds were given to the defendant as there is mutual trust between the parties being blood relatives, for the purpose of making necessary changes, qua the ownership in the record of Municipal Corporation, Rohtak. On completion of pleadings, the following issues were framed by the then learned Predecessor of the Court on 19.09.2015:

1. Whether the plaintiff is entitled to get the possession of suit property that is plot No. 12 measuring 472 $\frac{1}{4}$ sq. yards purchased vide sale deed No. 3928 dated 14.08.2000 and plot measuring 294 $\frac{1}{2}$ sq. yards purchased vide sale deed No. 3927 dated 14.08.2000 situated near New Power House? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has no cause of action to file and maintain the present suit? OPD
4. Relief

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5. Thereafter, the plaintiff was called upon to lead his evidence. He produced himself as PW1 and tendered affidavit Ex.PW1/A in his evidence reiterating the facts stated in his plaint. He also relied upon the following documents:

Ex.P1	Site plan
Mark-A	Copy of sale deed bearing No. 3928
Mark-B	Copy of sale deed bearing No. 3927

6. PW2 was Parvesh, Clerk HRA Branch, DC Office, Rohtak. He brought the original record and proved that Ex.P2 sale deed bearing No. 3927 dated 14.08.2000, Ex.P3 sale deed bearing No. 3928 dated 14.08.2000 and Ex.PX copy of sale deed executed in favour of defendant of the property measuring 83 ¼ square yards from plot No. 12 are true copies of original sale deeds.

7. PW3 was K.L.Kapoor, Naksha Navis, Tehsil Complex, Rohtak. He proved site plan Ex.P1 which was prepared by him on the request of plaintiff.

8. Thereafter, several opportunities were availed by learned counsel for the plaintiff to conclude its evidence but despite several opportunities, he failed to conclude the evidence and the evidence of the plaintiff was closed by Court order by the Court of learned Predecessor on 16.08.2016,

9. Then defendant was directed to produce evidence in his behalf. He produced himself as DW1 and tendered affidavit Ex.DW1/A in his evidence. He also relied upon the following documents:

Ex.DW1/B	Sale deed dated 14.08.2000
Ex.DW1/C	Sale deed dated 14.08.2000

10. Thereafter, learned counsel for the defendant closed his evidence vide his separately recorded statement on 11.10.2017 after tendering following documents:

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Ex.D1	Agreement to sell executed between Sh. Balbir Singh, Smt. Savitri and defendant of the property measuring 850 square yards and plot No. 12
Ex.D2 to Ex.D10	Receipt of electricity bills
Ex.D11 to Ex.D36	Electricity bills
Ex.D37	Copy of jamabandi bearing No. 596//579 for the year 2014-15
Ex.D38	Copy of jamabandi bearing No. 576//537 for the year 2004-05
Ex.D39 to Ex.D42	Receipt of house tax
Mark-A	Agreement executed by defendant with respect to Bhatta
Mark-B	Copy of ration card
Mark-C	Copy of ration card of plaintiff
Mark-D	Copy of ration card of defendant

11. Parties were then called upon to advance final arguments.
12. I have heard the learned counsel for the parties and have perused the case file.
13. My issuewise findings are as follows:-

Before proceeding further, it is important to decide other issues prior to issue No. 1.

Issues No. 2 & 3

The onus to prove these issues were on defendants but neither any document nor any evidence was produced in this respect. So, these issues are decided against defendants.

14. **Issue No. 1**

The onus to prove this issue was on plaintiff. The bone of contention

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between the parties is with respect to fact that whether plaintiff is the owner of the property bearing plot no. 12 measuring 472¼ square yards and another plot measuring 294 ½ sq. yards or whether defendant is the owner of the single plot which comprises of abovesaid plot as well as plot measuring 83 ¼ i.e. in total 850 sq. yards. To prove his contentions, plaintiff got examined himself as PW1 and tendered sale deeds i.e. Ex.P2 and Ex.P3 to establish his ownership over the alleged plots. It is the case of the plaintiff that he purchased the suit property on his own while a small portion of said plot was purchased by defendant, so, three separate sale deeds were executed, out of which two were in favour of plaintiff and one was in favour of defendant. As plaintiff was not residing at Rohtak, so, defendant took advantage of this fact and started using the property of the plaintiff for car repairing purposes in the name & style of M/s Shakti Motors.

15. It was the duty of the plaintiff to prove that he is the owner of the property and he has legal right over the suit property to claim his possession over the same. The plaintiff proved his contentions by producing the sale deeds i.e. Ex.P2 and Ex.P3 of his share of the suit property. Now, it was the duty of the defendant to prove his contentions i.e. plaintiff took advantage of the defendant's innocence and got these two sale deeds executed in his favour, even when the consideration of said sale deeds were given by defendant and he is in the possession of the suit property since same was purchased. Surprisingly, neither defendant filed any title suit nor produced any evidence to prove his averments. It is further argued by the learned counsel for the defendant that as per Ex.D1, he is the owner of suit property as agreement to sell was executed between Balbir and Smt. Savitri and defendant. It is settled law that agreement to sell does not confer any title in the presence of the sale deed which is Ex.DW1/B and Ex.DW1/C by which

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property was finally sold in favour of plaintiff. It is worthwhile to mention that as per Section 91 Indian Evidence Act, the terms of the written agreement or its contents can not be disproved only by making oral averments. So, the onus was on the defendant to prove that he is the owner of the suit property even when sale deeds Ex.P2 and Ex.P3 were executed in favour of plaintiff but he failed to do so.

16. It is further contested by learned counsel for the defendant that the facts mentioned in the plaint by the plaintiff were not elaborated and the source of income through which he purchased the suit property as well as other related circumstances at the time of the purchase of the suit property were disclosed only when these issues were raised by defendant in his written-statement and as replication is not the part of the pleadings, so, the replication as well as evidence produced on the basis of same can not be considered. The learned counsel for defendant relied up on the judgment passed by the Hon'ble Supreme Court in case titled as **K. Laxmanan Versus Thekkayil Padmini and others: 2009(1) RCR(Civil) 389**. In the said judgment, it is nowhere mentioned by the Hon'ble Supreme Court that replication is not part of the pleading, rather, in para no. 31 of said judgment, it is observed that if a replication is filed in respect of the plea raised in the written-statement and if same is allowed by the court then, it would become the part of the pleadings. In this case, replication was filed by the learned counsel for plaintiff as a reply to the written statement filed by the defendant. So, it is very much part of the pleadings and therefore, evidence led by the plaintiff is not beyond pleadings.

17. The learned counsel for the defendant also argued that it is not the responsibility of the defendant to produce any evidence to establish his averments as the present case is filed by the plaintiff to claim his rights and he has to prove his case on his own he can not take any benefit of the weakness of the case set up by the defendant. To

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prove his contention, Learned counsel for the defendant relied upon the judgment passed by the Hon'ble Supreme Court of India in case titled as **Union of India and others Versus Vasavi Co-op. Housing Society Ltd. and others: 2014(1) RAJ 697**. Admittedly, plaintiff has to succeed only on the strength of his case. In this case, to prove constructive possession, the plaintiff was duty bound to establish that he is having title over the suit property and he is legally entitled to have possession over it which is proved by the plaintiff by producing the sale deeds of the contested property. So, in this way, plaintiff is not taking benefit of the weakness of the case of the defendant rather it was the duty of the defendant to prove his averments.

18. The learned counsel for the defendant further submitted that the sale deeds produced by the plaintiff can not be relied upon as neither vendor nor vendee appeared in the witness box to prove the contents mentioned in the sale deed. He relied upon the judgments passed by the Hon'ble Bombay High Court in case titled as **Ganga Rambhau Zite and others Versus Chindu Dagadu Tikone:2002(4) RCR (Civil) 43**, **Sir Mohammed Yusuf and another V. D and another: AIR 1968 BOMBAY 112(V 55 C 20) & Nanak Chand V. Mian Mohammad: AIR 1936 LAHORE 114** and the Hon'ble Punjab & Haryana High Court in case titled as **Som Nath Versus Lachhman Singh: 2001(1) RCR(Civil) 100**. These judgments can not be relied upon as the facts of these cases are different from the facts of the present case. Moreover, in this case, the vendees i.e. buyers of the suit property was examined as PW1 and DW1. Moreover, DW1, in his evidence admitted that the contents of the sale deed of the suit property was known to him and he asked about it from the plaintiff, while in his written-statement, he submitted that he came to know about the name of the plaintiff as a owner in the sale deed only when notice of the suit was received by him. So, it shows that defendant has not

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approached the Court with clean hands. It is admitted that defendant is not illiterate and has retired from Government Service. He also admitted that he was in the possession of the sale deed but he did not read its content. It is hard to believe that when he was in the possession of the contested sale deed and he himself submitted those sale deeds in the office of M.C. Rohtak but he did not even bother to know the name of the owner of the suit property in those sale deeds.

19. The learned counsel for the defendant further argued that as they are having possession of the original sale deeds. So, false story has been concocted by the plaintiff for lodging this case. It is admitted by the defendant in his evidence that in routine manner, he used to handle all the matters related to property of the plaintiff in his absence and previously also, the property purchased by the plaintiff or his wife was got sanctioned by defendant from the office of Municipal Corporation. So, having possession of these sale deeds by defendant for the purpose of getting the same registered in the office of Municipal Corporation and for the purpose of completion of other formalities can not be ruled out. It is further argued by the learned counsel for the plaintiff that whole sale consideration was made by him but the plaintiff did not produce any evidence to prove that he was in the financial capacity of giving Rs. 16,00,000/- to the vendor at the time of the execution of sale deed. The learned counsel for the defendant also relied upon the judgments passed by the Hon'ble Punjab & Haryana High Court in case titled as **The State of Haryana Versus Suresh Chand and others: 1998(2) PLR 335 & Jaspal Singh and others Versus Sardul Singh and others: 1995(1) PLR 300** and the Hon'ble Supreme Court of India in case titled as **V.Shankaranarayana Rao(D) by Lrs. & Ors. Versus Leelavathy(Dead) by Lrs. & Ors.: 2007(3) RCR (Civil) 143** but said judgments can not be relied upon as the facts of these cases are different from the facts of

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the present case. The complete defence of the defendant was just based on oral averments and nothing substantial was produced on the file to establish that either he is the owner of suit property or he is having any other legal right over the suit property. In view of abovesaid discussion, the present issue is decided in favour of plaintiff.

20. Relief

As a sequel to aforesaid discussion and in the light of abovesaid cases, the suit of the plaintiff is decreed. No order as to cost. Decree-sheet be prepared accordingly. File be consigned to record room after necessary compliance.

Announced in the open court
on 16.01.2018

(Seema)
Civil Judge,(Jr. Divn.)
Rohtak, UID No. HR0387

All the pages of this judgment are duly signed by me.

(Seema)
Civil Judge,(Jr. Divn.)
Rohtak, UID No. HR0387

Geetu, Stenographer

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Presence: Mr. Deepak Sethi, counsel for the plaintiff
Mr. V.S.Rathi, counsel for the defendant

Vide my separate judgment of even date, the suit of the plaintiff is decreed.
No order as to cost. Decree-sheet be prepared accordingly. File be consigned to record room after necessary compliance.

Announced in the open court
on 16.01.2018

(Seema)
Civil Judge,(Jr. Divn.)
Rohtak, UID No. HR0387

Geetu, Stenographer