

Ravinder Pal v. Satish Kumar (P&H) : Law Finder Doc Id # 204267

PUNJAB AND HARYANA HIGH COURT

Before :- Mrs. Sabina, J.

R.S.A.No. 3931 of 2008 (O&M). D/d. 15.07.2009.

Ravinder Pal - Appellant

Versus

Satish Kumar And Another - Respondents

For the Appellant :- Rajinder Sharma, Advocate.

For the Respondent :- Ashish Aggarwal, Advocate.

A. Indian Evidence Act, 1872 Section 68 Registered sale deed - Proof of - No requirement of examination of attesting witness for purpose of establishing the execution of the sale unless its execution is denied by the person, who had executed the same.

[Para 9]

B. Adverse possession - Plea of - Once plea of adverse possession is raised, it presupposes the title over the suit land of the plaintiff - 2008 (1) CCC 444 (P&H), Relied upon.

[Para 13]

Cases Referred :

[Jagat Singh v. Sri Kishan Dass, 2008 \(1\) CCC 444 \(P&H\).](#)

JUDGMENT

Mrs. Sabina, J. - Plaintiffs - Satish Kumar and Ashwani Kumar filed a suit for possession of the suit property and the same was dismissed by the Civil Judge (Jr. Divn.) Amritsar vide judgment and decree dated 20.4.2007. Aggrieved by the same, plaintiffs filed an appeal, which was allowed by the Additional District Judge, Amritsar vide judgment and decree dated 4.9.2008. Hence, the present appeal by the defendant.

2. Brief facts of the case, as noticed by the lower appellate Court in para Nos. 2 and 3 of its judgment, are as under:-

"2. In brief, the case of the plaintiffs is that they are owners to the extent of $\frac{5}{6}$ th share of the suit property having purchased the same from Anoop Kumar son of Parladd Rai and others vide sale deed dated 3.9.1998. At the time of execution of the sale deed, the plaintiffs got the possession of two rooms shown in red colour of the site plan from Gulzari Lal tenant. Possession of some other part of the house was obtained from the vendors at the time of execution of the sale deed dated 3.9.1998, which was registered on 4.9.1998. The said rooms shown as red in the site plan were kept locked by the

plaintiffs as they intended to shift to the said rooms due to shortage of accommodation with them. The defendant is the real brother of the plaintiffs. Defendant and his family members have mischievously got themselves recorded as tenants in the record of the municipal corporation in a room and a kitchen. They also broke the locks of the said rooms and the kitchen and removed all the articles and goods lying therein belonging to the plaintiffs, the value of which was more than Rs. 7,000/-. When the plaintiffs came to know about the same, they approached the defendant but he refused to hand over the possession of the house to the plaintiffs. In order to justify his possession, the defendant even filed a suit for permanent injunction against the plaintiffs, which was dismissed on 15.2.2005 by the court of Shri Sanjeev Joshi, the then Civil Judge (Junior Division), Amritsar and the other such suit is pending in the court of Shri Sumit Ghai, Civil Judge (Junior Division) Amritsar. The defendant has no right to retain the possession of the disputed portion of the suit property. Since the defendant was not ready to hand over the possession of the disputed portion of the suit property to the plaintiffs, this necessitated the filing of the present suit.

3. The suit has been resisted by the defendant. In the written statement, the defendant has taken preliminary objections on the ground of maintainability, estoppel, valuation and on merits, it was denied if the plaintiffs are the owners of the property in dispute. According to the defendant, the alleged sale deed is the result of fraud and fabrication having no value in the eyes of law. The plaintiffs never came in possession of any part of the suit property till date and they have filed the present suit only to grab the property under the possession of the defendant. It has also been denied if the defendant or his family members have got themselves recorded as tenants in the municipal corporation record."

In fact, the defendant is owner in possession of the disputed property and his possession is uninterrupted, hostile and known to the whole world. In this regard, the defendant has also filed a suit for declaration claiming himself to be the owner of the property in dispute. It has also been denied if the defendant had ever broke open the locks of any room. The other averments made in the plaint have also been denied being wrong and in the end, a prayer for dismissal of the suit has also been made."

3. On the pleadings of the parties, following issues were framed by the trial Court:-

- "1. Whether the plaintiffs are the owners of the property fully detailed in para No. 1 of the plaint on the basis of the sale deed dated 3.9.1998 registered on 4.9.1998? OPP
2. Whether the plaintiffs are entitled to possession as prayed for? OPP
3. Whether the suit is legally not maintainable? OPD
4. Whether the plaintiff has not come to the court with clean hands and has suppressed the material facts from the Court? OPD
5. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD
6. Whether the present suit is not properly valued for the purposes of court fee and jurisdiction? OPD
7. Relief. "

4. After hearing learned counsel for the parties, I am of the opinion that the present appeal deserves to be dismissed.

5. The case of the plaintiffs was that they were owner of the suit property to the extent of 5/6th share in view of sale deed dated 3.9.1998 executed by Anoop Kumar and others. They were also given possession of two rooms shown in red colour in the site plan. The defendant, however, got himself recorded as tenant with the Municipal Corporation and forcibly took possession of the two rooms and the kitchen. The case of the defendant, on the other hand, was that he had become owner in possession of the suit property by way of adverse possession.

6. Plaintiffs in order to prove their case, placed on record sale deed Ex.PW3/1. Plaintiff No. 1 Satish Kumar had appeared in the witness box as PW-3 and deposed as per the contents of the plaint. PW-1 Sawinder Singh corroborated the statement of PW-3 to the effect that defendant had forcibly taken possession of the suit property. The defendant, while appearing in the witness box as DW- 2, on the other hand, deposed that plaintiffs were his real brothers and had no concern with the suit property. He was in possession of the entire property. The alleged power of attorney dated 20.8.1998 was a forged and fabricated document. DW-2 Sharanjit Kaur has corroborated the statement of the defendant.

7. Plaintiffs in order to prove their title have placed on record sale deed dated 3.9.1998, which was got registered on 4.9.1998.

8. Section [68](#) of the Indian Evidence Act 1872 reads as under:-

"Proof of execution of document required by law to be attested.- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

9. The sale deed in question is a registered document and as such no attesting witness was required to be examined to prove the execution of the sale deed unless its execution was denied by the person, who had executed the same. Hence, in the present case, the plaintiffs were not required to examine the attesting witness of the sale deed.

10. Learned Additional District Judge in the impugned judgment has observed that in cross-examination, plaintiff No. 1 Satish Kumar replied to a question as under:-

"It is correct that the property in question was actually owned by Piara Lal, grand father of Anoop Kumar."

Anoop Kumar is none else than the grand son of Piara Lal. In these circumstances, learned Additional District Judge rightly observed that Anoop Kumar was entitled to sell the property, which was initially owned by his grand father. Moreover, it was not established on record that the sale deed in question had been challenged by any of the legal heirs of Piara Lal.

11. Learned Additional District Judge has further observed that the defendant had failed to prove his ownership on the basis of adverse possession. In his cross-examination, the defendant could not even tell as to since how long, he was in possession of the suit property. The fact that the defendant had raised a plea of adverse possession, means that he had impliedly admitted the ownership of the plaintiffs qua the suit property.

12. Learned counsel for the appellant has failed to controvert the said observations made by the Learned Additional District Judge.

13. It has been held by this Court in ***Jagat Singh and others v. Sri Kishan Dass and others, 2008 (1) Civil Court Cases 444 (P&H)*** that the question that the plaintiff has not established the identity of the suit land or the property cannot be identified, is not borne out from the record. The defendant-appellants have raised a plea of adverse possession. Once a plea of adverse possession is raised, it pre-supposes the title over the suit land of the plaintiff.

14. In these circumstances, the learned Additional District Judge had rightly decreed the suit of the plaintiffs. I do not find any illegality or irregularity in the impugned judgment which may give rise to any substantial question of law for consideration of this Court in second appeal.

15. Accordingly, the present appeal stands dismissed.

Appeal dismissed.