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**(2015) 07 P&H CK 0060**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Regular Second Appeal No. 3046 of 2015 (O&M)

Dalip Singh

APPELLANT

Vs

The Amritsar Improvement Trust

RESPONDENT

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**Date of Decision :** 02-07-2015

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 96  
Transfer of Property Act, 1882 — Section 53-A

**Citation :** (2015) 07 P&H CK 0060

**Hon'ble Judges :** Rajiv Narain Raina, J

**Bench :** Single Bench

**Advocate :** Baljinder Singh Sra, for the Appellant

**Final Decision :** Dismissed

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## Judgement

Rajiv Narain Raina, J.

1. Dalip Singh brought a suit for declaration against the Amritsar Improvement Trust, Amritsar (for short "the Trust") praying for declaration that the plaintiff is owner in possession for the last more than 40 years of 1/2 of a plot and super structure built thereon comprising total area of 2400 sq. yards bearing plot # 297, East Mohan Nagar, Amritsar bounded by description in the head note to the plaint. The other half was in possession of one Inderjit Singh. The plaintiff sought mandatory injunction directing the Trust to execute a sale deed with respect to one half of suit corpus against which Dalip Singh (dead) represented by LR's had made full payment of sale price.

2. Deceased plaintiff claimed that originally one Nathu Ram had purchased plot # 297 from the Trust. He defaulted in making payments of the installments. Cornered, Nathu Ram associated Ujjal Singh and Inderjit Singh as co-sharers for transfer of the plot in their names with liability upon them to pay the balance outstanding dues. However, the sale deed was not executed in favour of Ujjal Singh and Inderjit Singh till the suit was presented on December 11, 2008. The

plaintiff agreed to purchase 1/2 share from Ujjal Singh. The plaintiff and Ujjal Singh had earlier entered into an agreement dated March 05, 1968 for sale of half share of the plot and possession was delivered to the plaintiff. Thereafter, he remained as was his say in physical possession of the suit property since its purchase and presently it is with the LRs of late plaintiff Dalip Singh. Ujjal Singh executed an irrevocable power of attorney in favour of plaintiff on July 04, 1973. The plaintiff made a construction over the plot and enjoyed the fruits of the property without let or hindrance. The plaintiff claimed that electricity, water and sewerage connection are in his name. Ownership and possession over the suit property was claimed under section 53-A of the Transfer of Property Act, 1882. The plaintiff's name is recorded in the house tax record as owner of the suit property. Becoming responsible for payment of balance consideration, the plaintiff discharged the liability by making full payment of the sale price partly by cash and by cheques to the Trust. The plaintiff disclosed that there was civil litigation in a shape of a suit for permanent injunction between plaintiff and the other purchaser Inderjit Singh. Plaintiff has been pressing the Trust from time to time to issue sale deed in his favour but the Trust has not obliged.

3. On notice, the Trust entered appearance and filed written statement contesting the case. The Trust raised preliminary objections as to locus standi and misjoinder and non-joinder of necessary parties; the suit is not maintainable; no cause of action to file the suit has arisen in favour of the plaintiff; the plaintiff is estopped by his own act, conduct and deeds in filing the suit; the suit is an abuse of the process of law and he has not come to court with clean hands and has suppressed material facts from the court. The Trust also disclosed that on the demise of Ujjal Singh, the name of his wife Surinder Kaur was brought on record of the Trust in the suit property file maintained by it. The wife appointed one Bachan Singh as her Special Power of Attorney whereas on the death of Inderjit Singh, the name of his wife Surjit Kaur and son Raj Kanwaljit Singh has been brought on Trust record. While Nathu Ram who was the original allottee of the plot to the extent of 1/3rd share deputed Charan Singh son of Lal Singh as his attorney. The power of attorney has come to an end on the death of the principal. The plaintiff allegedly bought property from Ujjal Singh deceased by a private act. The agreement to purchase 1/2 share by the plaintiff was disputed as it was without knowledge of the Trust. Therefore, delivery of possession as claimed by the plaintiff was denied. The power of attorney dated July 04, 1973 executed by Ujjal Singh in favour of plaintiff became defunct on the death of the giver. The further facts disclosed by the Trust were that Nathu Ram son of Mool Chand had requested the Trust through letter dated February 01, 1965 of his naming Ujjal Singh and Inderjit Singh as his co-sharers of the suit corpus in equal shares. It is not disputed that on June 07, 1965 Ujjal Singh and Inderjit Singh were nominated co-sharers in the disputed plot. On the death of Ujjal Singh, the Trust brought Surinder Kaur widow as his LR who later executed power of attorney on August 08, 1996 in favour of Bachan Singh. Thus, plaintiff Dalip Singh has no concern with the suit property. On the

basis of this entry with respect to the plot rights were claimed through a power of attorney which came to an end on the death of Ujjal Singh. But on the record of the Improvement Trust, the owners on the date of filing of the suit was Surinder Kaur through power of attorney Bachan Singh and Surjit Kaur and son Raj Kanwaljit Singh on the death of Inderjit Singh and Nathu Ram through power of attorney Charan Singh vide attorney dated August 20, 1999. The name of Dalip Singh did not figure in the list of owners. The Trust though admitted receiving the full payment of the plot which had been deposited. The Engineer Section of the Trust reported through letter dated August 28, 2003 while issuing certificate of completion of construction work that on measurement the total area of plot on the spot was measured at 2046.43 square yards and in this certificate the name of Dalip Singh is not mentioned.

4. There is a very vital disclosure of material fact by the Trust which tends to remove the base of the case that during his life-time, Ujjal Singh cancelled the power of attorney in favour of plaintiff vide deed of cancellation dated January 03, 1974 registered in the office of the Sub Registrar, Amritsar and on the same date he had informed the Trust by letter bearing Diary # 11621 dated January 29, 1974 of the cancellation of power of attorney.

5. The trial court received replication to the written statement and on the pleadings framed seven issues which need not detain us in detail since the core question was whether the plaintiff was entitled to declaration and mandatory injunction as prayed for and whether the oral and documentary evidence adduced on record supported the respective cases of the disputing parties.

6. The long and short of the decision on issue # 1 were in taking cognizance of two key documents relied upon by the plaintiff. One was an agreement to sell dated March 05, 1968 of the suit property and the other was Ujjal Singh's irrevocable power of power of attorney given in favour of Dalip Singh which was executed in the year 1973. If possession passed surreptitiously the agreement to sell was not registered. Neither did Dalip Singh filed a suit for specific performance of the agreement to sell dated March 05, 1968 at any time before the expiration of the period of limitation prescribed therefor or till the date of filing of the suit. If building/ construction was made on the land then there is no escape that Ujjal Singh was a defaulter in payments to the Trust and had introduced two persons as co-sharers which were not the plaintiff. Those were thus constructed at the risk and cost of the plaintiff as he had no legal title to the suit property which gave him no legal right to construct on the property except as an occupant on the land under an agreement to sell which had no legal foundation. It matters little whether the electricity, water and sewerage connection and the house tax record stood in the name of Dalip Singh since such things confer no right to property. If Dalip Singh succeeded in securing a permanent injunction against Inderjit Singh by decree passed by the court of the then Sub Judge Ist Class, Amritsar on March 19, 1987 which was a decision inter parties to which the Trust was not privy or party consenting it was not bound by

the decree.

7. The testimonies of the plaintiff's witnesses could not go beyond legal rights and create new rights which had not accrued or vested in Dalip Singh and the irrevocable power of attorney executed by Ujjal Singh duly cancelled would not arm the plaintiff to claim mandatory injunction against the Trust which POA in any case ended with the death of Ujjal Singh and cannot go beyond his life-time. The trial court had discussed in summary the oral evidence, the testimony of the witnesses produced by the plaintiffs and are therefore not traversed in this order as that would not be significant in the result of the adjudication as they are mostly self serving statements made in the witness box. In sum total they amount to nothing more than what the documentary evidence can give to the plaintiff.

8. The trial court noticed that the plaintiff had not impleaded the LRs of Ujjal Singh and particularly his wife Surinder Kaur who is owner of part of the property as witnessed in the official Trust record. The plaintiff failed to take steps to implead Surinder Kaur as party even after disclosure of her status in the written statement as owner. Ujjal Singh had duly informed the Trust of cancellation of the sale deed and that the same had been rendered infructuous. The court also noticed that the plaintiff had not proved on file his capacity and source of making the alleged payment of installments due to the Trust on behalf of Ujjal Singh. Crediting money into the account of the Trust with respect to the property of Ujjal Singh would alone not confer any right on the tenderer unless the deposit is in recognition of rights created by the custodian of property, the Trust. The court also held in issue # 3 that the suit was bad for misjoinder and non- joinder of necessary parties. In these circumstances, the suit was dismissed by the learned Civil Judge (Junior Division), Amritsar by judgment and decree dated August 19, 2013.

9. Aggrieved by the decree, the plaintiffs preferred appeal to the court of the learned District Judge, Amritsar who has by a well reasoned order dismissed the appeal under section 96 of the CPC whereby the findings of the trial Judge on the issues were affirmed. The court of first appeal held that the agreement to sell dated March 05, 1968 executed by Ujjal Singh in favour of Dalip Singh cannot be approved as legal and valid agreement since the conveyance deed regarding the suit property was yet to be executed in favour of Ujjal Singh by the Trust. Ujjal Singh himself was a defaulter in payment of installments and no vested right of allotment accrued to him when he sought the help of co-sharers introduced to step in to defray the outstanding dues of the Trust and save the property from resumption. Ujjal Singh had no better title as regards the suit property to agree to pass and had no power to enter into a valid agreement to sell since he had no dominion over plot # 297. Therefore, the Trust could not be compelled by a mandatory injunction issued by the court to execute sale deed in favour of the plaintiff or his LRs, the present appellants.

10. In the facts and circumstances of the case, I have no reason whatsoever to

disagree with the cogent reasoning of the learned District Judge, Amritsar in his judgment and appellate decree dated March 31, 2015 and would dismiss the appeal as not one where any questions of law, much less substantial ones arise for consideration in the second appeal side of this court. There neither is any error of law or of fact in the work of the courts below in the just and proper dispensation of the case. The suit was eminently fit to be dismissed. I would not interfere in this appeal and would rather commend its dismissal.

11. The appeal is accordingly dismissed.