

(2010) 02 P&H CK 0139
In the Punjab And Haryana At Chandigarh

Inder Singh and Others

APPELLANT

Vs

Deiya (since deceased and represented by his L.Rs.) and
Another

RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Evidence Act, 1872 — Section 114

Citation : (2010) 02 P&H CK 0139

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahesh Grover, J.—This Regular Second Appeal is directed against judgment and decree dated 15.5.2003 passed by the Additional District Judge, Panipat (hereinafter described as 'the first appellate Court') whereby the appeal of the plaintiff-respondent No. 1 (since deceased and is represented by his legal representatives) was accepted and the judgment & decree dated 6.9.1992 of the Additional Civil Judge (Senior Division), Panipat (referred to hereinafter as 'the trial Court') were set aside.

2. Respondent No. 1 had filed a suit for possession pleading that on the pretext of getting a mortgage deed prepared for the land in question, his thumb impressions were obtained on blank papers and the sale deed was executed on 25.9.1974 in favour of the appellants. As a consequence, the mutation was also entered.

3. The appellants had defended the sale deed in their favour to be a valid piece of document and denied the other allegations of respondent No. 1.

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

1. Whether plaintiff is entitled to possession of suit land? OPP

2. Whether plaintiff is entitled to a decree for declaration that he is joint owner in possession in respect of the suit land and the registered sale deed dated 25.9.74 is null and void and not binding upon the plaintiff? OPP
3. Whether plaintiff is entitled to decree of permanent injunction from changing the nature of the suit land? OPP
4. Whether suit is not maintainable in the present form? OPD
5. Whether plaintiff has no locus standi to file the suit? OPD
6. Whether plaintiff has no cause of action to file the suit? OPD
7. Whether suit is bad due to non-joinder of necessary parties? OPD
8. Whether plaint is liable to be rejected/OPD
9. Whether suit is barred by time? OPD
10. Relief.

5. After appraisal of the entire evidence on record, the trial Court concluded that respondent No. 1 had failed to prove that the appellants had played fraud upon him while getting the sale deed dated 25.9.1974 executed. The suit was accordingly dismissed.

6. In appeal, the first appellate Court, however, reversed the findings of the trial Court and decreed the suit of respondent No. 1 while concluding that the sale deed in question and consequential mutation were null & void and were not binding on his rights.

7. Hence, this appeal.

8. The appellants have also moved C.M.No.11070-C of 2009 for permission to lead additional evidence and C.M. No. 247-C of 2010 for permission to produce certified copies of the application for partition, reply filed to the same and the statements recorded in the said proceedings and also a copy of Civil Suit No. 524 of 1998 filed by one Raj Mal. It has been stated that in the aforesaid proceedings, respondent No. 1 had admitted the factum of the sale of the suit land in favour of the appellants. It has further been stated that these documents, especially the admission made by respondent No. 1 during the course of the said proceedings which were before the revenue authorities and which came to the knowledge of the appellants recently, were acutely essential for proper adjudication of the case.

9. The applications have been seriously opposed by respondent No. 1, who has stated that the documents sought to be produced by way of additional evidence were very well within the knowledge of the appellants and that they have not been able to show sufficient cause that despite due diligence, they could not produce the same before the Courts below. It has also been stated that the applications have been moved with mala fide intention as respondent No. 1-

Deiya died in March,2009 and the applications have been moved thereafter. They have also contested the veracity of the documents and have pleaded that after the amendment in the Code of Civil Procedure,1908 in the year 1975, the application under Order 41 Rule 27 thereof cannot be allowed without it being shown to the Court that the applicant had been prevented from producing the documents sought to be produced by way of additional evidence despite due diligence.

10. Learned Counsel for the appellants has supported the assertions of the appellants made in the applications and placed reliance on K. Venkataramiah Vs. A. Seetharama Reddy and Others, ; North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (D) By Lrs. 2008 (3) CCC 226 (S.C.); Ram Niwas and Anr. v. Roshan and Ors. 2006 (2) P.L.J. 692 (P&H) and Jeeto @ Smt. Manjit Kaur v. Union of India 2007 (4) CCC 678 (P&H).

11. In K. Venkataramiah's case (supra), the Apex Court observed as under:

Under Rule 27(1), the appellate court has the power to allow additional evidence not only if it requires such evidence ?to enable it to pronounce judgment?, but also for ?any other substantial cause?. There may well be cases where even though the court finds that it is able to pronounce judgment on the state of record as it is and so it cannot strictly say that it requires additional evidence to enable it to pronounce judgment, it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence for any other substantial cause under Rule 27(1)(b) of the Code.

12. In paragraph 17 of the judgment in North Eastern Railway Administration, Gorakhpur's case (supra), their Lordships of the Supreme Court observed as under:

17. It is manifest that in the present case, the High Court did not examine the record of the case with the thoroughness which was expected at the time of disposal of the pending applications. On a perusal of the impugned decisions, it is clear that the High Court was not even aware of the pendency of the application under Order 41 Rule 27 CPC seeking leave to adduce additional evidence. A perusal of the documents, which came to light pursuant to the directions given by the High Court on 3rd April,2002, prima facie, goes to show that these are likely to widely affect the decision of the Court in one way or the other. If the stand of the appellant, which, according to them, is borne out from the documents now on record, is found to be correct, then obviously these will have material bearing on the core issue, namely, whether the decree dated 13th March,2001 is a nullity, having been allegedly obtained by concealing material facts and playing fraud on the Court. It is trite that a judgment or decree by the first court or by the highest court ? obtained by playing fraud on the Court is a nullity and non est in the eyes of law. (See S.P. Chengalvaraya Naidu (dead) by

L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and India Household and Healthcare Ltd. Vs. LG Household and Healthcare Ltd., . In any event, had the Court found the additional documents, sought to be admitted, necessary to pronounce the judgment in the appeal, in a more satisfactory manner, it would have allowed the application and, if not, the application would have been dismissed. Nonetheless, it was bound to consider the application before taking up the appeal. We say no more at this stage, as the aforementioned applications are yet to be considered by the High Court on merits in the light of the legal position, briefly set out hereinabove. In view of the afore-noted factual scenario, we are of the opinion that the impugned judgment and the orders are erroneous and cannot be sustained.

13. In *Ram Niwas and Anr. v. Roshan and Ors.* (supra), this Court in paragraph 18 of the judgment observed as under:

18. The record referred to and sought to be adduced by way of additional evidence was relevant for the purpose of determining the controversy as this would have determined both the nature of possession of the plaintiff-respondents and the status of the appellants qua the suit property. If Ganga Ram and Ganga Sahai were held to be the same person on the basis of the evidence which was sought to be adduced by the appellants, then obviously the plea raised by the appellants that Ganga Sahai was a tenant in the property would be established. Meaning thereby that the possession of the respondents would be permissive.

14. In *Jeeto @ Smt. Manjit Kaur's* case (supra), this Court laid down as under:

11. The learned trial Court was not correct in dismissing the application merely on the ground of delay when the evidence sought to be produced was essential for the just and proper adjudication of the case as the relationship of the parties was in dispute. As regards the contention of the learned Counsel for respondent No. 5, the same cannot be the basis for rejection of the present revision petition as the parties have to prove their case before the trial Court.

Consequently, this revision petition is allowed, the impugned order is set aside and the application moved by the petitioner for additional evidence is allowed. However, it shall be subject to payment of Rs. 2000/- as costs.

15. On the other hand, learned Counsel for the legal representatives of respondent No. 1 opposed the prayer of the appellants made in the applications and placed reliance on the following judgments for rejection thereof:

1. *Harinderpal Singh v. Rani* (Since dead) through her LRs., 2004(4) RCR (Civil) 142 (P&H);
2. *Gurdial Singh and Anr. v. Joga Singh*, 2004(4) RCR (Civil) 472;
3. *The State of Gujarat and Another Vs. Mahendrakumar Parshottambhai Desai (Dead)* by L.Rs., ;
4. *Basayya I. Mathad v. Rudrayya S. Mathad and Ors.* 2008 (1) RCR 356 (S.C.).

16. In Gurdial Singh's case (supra), a learned Single Judge of this Court observed as under:

10. The document, which the appellant wanted to produce, was already in his knowledge. He has not given any explanation as to why this document was not produced at the earlier point of time. Otherwise also, this document is not necessary for proper adjudication of the case. Therefore, the application moved by the appellant under Order 41 Rule 27 CPC was rightly dismissed.

For the reasons mentioned above, there is no merit in the appeal and the same is, therefore, dismissed.

17. In Harinderpal Singh's case (supra), another learned Single Judge of this Court held in paragraph 11 of the judgment as follows:

11. I have gone through the judgments cited by the counsel for the appellant and considered the submission made by him. There is no quarrel with the proposition of law as enunciated in the aforesaid judgments. The courts below have concurrently held that the plaintiff was not in possession of the suit land. As far as the question of allowing additional evidence to be brought on record, I find no justifiable cause to accept this prayer at this belated stage. It is not the case of the appellant that the documents which are now sought to be produced by way of additional evidence were either not in existence at the time when the plaintiff was leading his evidence or that the same could not be produced despite due diligence. Even otherwise, under the Punjab Land Revenue Act, only presumption of truth can be attached to the entries contained in these revenue documents and they are not the conclusive proof of a fact. In these circumstances, in my view, the findings recorded by the courts below that the plaintiff was not in possession of the suit land, cannot be disturbed in this second appeal.

18. In State of Gujarat and Anr. v. Mahendrakumar Parshottambhai Desai (dead) by Lrs. (supra), the Apex Court observed in paragraphs 10 and 11 of the judgment as under:

10. We shall first deal with the appeals preferred against the judgment and order of the High Court rejecting Civil Applications Nos.964 and 1150 of 2002 filed by the appellants herein for adducing additional evidence under Order 41 Rule 27 of the Code of Civil Procedure. The documents sought to be produced were contained in Annexure I to the applications. The applications were opposed by the respondents. It was submitted on behalf of the appellants that the applications may be treated as one under Order 41 Rule 27(1)(b) of the Code of Civil Procedure, apparently because the other provisions of the rule did not apply to the facts and circumstances of the case. The High Court noticed that a similar civil application being No. 4849 of 2000 had been filed earlier when this appeal had been placed for hearing before another Division Bench of the High Court, but the said application was rejected by order dated 22.6.2000. The High Court further found that Rule 27(1)(b) of Order 41 can be invoked only if the Court

requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. In the instant case, it was not as if the additional evidence was required by the Court to enable it to pronounce judgment and, therefore, additional evidence was sought to be adduced for ?substantial cause? since serious prejudice would be caused to the appellants if the additional evidence was not permitted to be adduced. Reliance was placed on the judgment of this Court in *Municipal Corporation for Greater Bombay Vs. Lala Pancham of Bombay and Others*, wherein this Court held that though the appellate court has the power to allow a document to be produced and a witness to be examined under Order 41 Rule 27 CPC, the requirement of the said Court must be limited to those case where it found it necessary to obtain such evidence for enabling it to pronounce the judgment. This provision did not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in the case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncement of judgment in a particular way. The High Court referred to the earlier proceedings before various authorities and came to the conclusion that though the appellants had sufficient opportunity to bring the evidence on record, for reasons best known to it, the State did not produce the entire evidence before the trial Court and it was only 8 years after the dismissal of the suit that the applications were filed for adducing additional evidence in the appeal. The High Court, therefore, dismissed the applications for adducing additional evidence.

11. We find no error in the approach of the High Court. We have earlier noticed the long history of litigation which preceded the filing of the suit. The documents sought to be brought on record are not documents which were discovered later or came into existence after the filing of the suit. The documents are part of the government records and they could have been produced in the suit.

19. In *Basayya I. Mathad*'s case (supra), the Apex Court laid down as under:

It is clear that parties to the lis are not entitled to produce additional evidence as of course or routine but must satisfy the conditions stated in Sub-clauses (a) & (aa). Admittedly, such recourse has not been resorted to neither by the party concerned nor adhered those principles by the High Court. Paragraph 3 of his order shows that the learned Judge verified the document produced on his direction without complying the mandate as provided under Rule 27 of Order XLI. Hence, we are of the view that the finding of the learned Judge based on a document produced at the time of argument de hors to Rule 27 referred above cannot be sustained in the eye of law. In such circumstances, his ultimate conclusion treating the suit property as a family property partible among the members of the family is also liable to be set aside. In fact, Sub-clause (2) of Rule 27 mandates that wherever additional evidence is allowed to be produced by an Appellate Court, it shall record the reason for its admission. It is needless to mention that the High Court neither followed those conditions for production

of additional evidence nor recorded the reason for basing reliance on the same.

20. I have thoughtfully considered the rival contentions and have also perused the record.

21. The appellants have claimed a sale deed in their favour, the existence of which is not denied, but was challenged by respondent No. 1 on the ground of fraud. By way additional evidence, the appellants wish to produce on record certain documents which include the statement of deceased-Deiya, who had admitted the factum of the sale in partition proceedings before the revenue authorities. In my opinion, the provisions of Order 41 Rule 27 of the CPC which confer power on the Court to allow additional evidence if such evidence is necessary to enable it to pronounce a judgment or for any substantial cause are attracted in the facts of the instant case. The right of the appellants flows from a registered sale deed in their favour which can also invite a presumption u/s 114 of the Indian Evidence Act, 1872, but for the time being, the Court refrains its hands from acquiring any such presumption and will prefer to remit the case to the trial Court only for the limited purpose of obtaining a report regarding the validity and authenticity of the documents which have been attached with the applications. These documents are absolutely necessary to pronounce and record a finding on the controversy raised before this Court and also to erase chances of any serious prejudice to the appellants, who have staked their claim on the basis of a registered sale deed, which fact, prima facie, finds mention in the statement and the proceedings before the revenue authorities in which vendor-Deiya was a party.

22. Accordingly, the applications are allowed, the documents filed along with them are taken on record and the matter is remanded back to the trial Court, who shall, after due notice to the parties to the litigation, shall determine the validity thereof and submit a report to this Court.

23. The parties are directed to appear before the trial Court on 15.3.2010. The report shall be submitted by the trial Court within six months from the date when it commences upon such proceedings.