
(1997) 02 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2633 of 1979

Lajpat Rai and Others

APPELLANT

Vs

Smt. Vidya Wati and Others

RESPONDENT

Date of Decision : 11-02-1997

Acts Referred:

Evidence Act, 1872 — Section 90

Citation : (1997) 117 PLR 126 : (1997) 4 RCR(Civil) 130

Hon'ble Judges : B. Rai, J

Bench : Single Bench

Advocate : Swapan Garg, for the Appellant; Arun Jain, for the Respondent

Final Decision : Dismissed

Judgement

B. Rai, J.—This Regular Second Appeal arises out of a Civil Suit No. 208 of 1978 instituted in March 17, 1975 by Lajpat Rai, Momesh Chander, Dev Raj and Som Parkash against defendant No. 1 Vidya Wati widow and defendants 2 to 6 sons of Chander Shekhar.

2. Brief facts as mentioned in the amended plaint are that one Shobha Ram son of Shambhu Dutt was the owner of the suit house. That house was sold by him to Lajpat Rai and others Plaintiffs vide sale deed, dated April 18, 1972. The case of the plaintiffs further is that Vidya Wati was to perform the marriage of her daughter. She requested the plaintiffs to allow her to use the premises and also agreed to return the possession after the marriage. It was alleged that a year back, possession of the house was delivered to defendants but they even after the marriage did not vacate the premises and refused to deliver the possession which led the plaintiffs to file the suit. Paring the pendency of the suit, the plaintiffs were allowed to amend the plaint vide order, dated June 15, 1976 on payment of Rs. 15/- as costs. Consequently, amended plaint was filed whereupon the counsel for the defendants made the statement that the written statement already filed be read even after the amendment of the plaint.

3. On notice, the suit was contested by the defendants. They traversed all the allegations of the plaintiffs regarding their ownership and that of Shobha Ram. It was also denied that possession of the house in dispute was taken with the consent of the plaintiffs. They pleaded that one Chandan Ram son of Kundan Lal was the owner of the property. The said Chandan Ram sold the same vide sale deed, dated June 22, 1939 to Chander Shekhar, predecessor-in-interest of the defendants who was in continuous possession of the suit house for more than 35 years and the defendants are now in possession of the same in their own right as owners.

4. Replication was filed by the plaintiffs denying the allegations about Chander Shekhar being owner of the premises. It was further pleaded that Chander Shekhar had gifted his entire property in the year 1940 by way of oral gift to Shambhu Dutt father of Shobha Ram predecessor-in-interest of the plaintiffs, by way of "Sarvas Daan".

On the pleadings of the parties, following Issues were framed:

- 1) Whether the plaintiffs purchased the suit property, from Sobha Ram as alleged? OPP
- 2) Whether the defendants inherited that suit property from Chander Shekhar? OPD
- 3) Whether Chander Shekhar had purchased suit property from Chander vide sale deed dated 22.6.1939? OPD.
- 4) Whether the plaintiffs have no locus standi? OPD
- 5) Whether the suit is not properly valued? OPD
- 6) Whether the suit is not maintainable in the present form? OPD
- 7) Relief.

5. After considering the oral as well as documentary evidence led by the parties, Issue No. 1 was decided in favour of the plaintiffs holding that the plaintiffs purchased the suit property from Shobha Ram. Under Issue No. 2, it was held that in the light of discussion on Issue No. 1, the defendants did not succeed to prove their inheritance to the suit property. Under Issue No. 3, it was held that Chander Shekhar cannot be defined to have purchased the suit property from Chandan Ram vide sale deed, dated June 22, 1939. Under Issue No. 4, finding was returned that in view of the sale deed, dated April 18, 1972. Exhibit P1, the plaintiffs have the locus standi to file the present suit. Thus, Issues 1 to 3 were decided against the defendants. Issues 5 and 6 were taken up together. These were not pressed before the trial Court. As such, these were also decided against the defendants. In view of the findings recorded under the various Issues, suit of the plaintiffs was decreed for possession in respect of the suit property described in Para No. 1 of the plaint, vide judgment, dated December 26, 1978, leaving the parties to bear their own costs.

6. Feeling aggrieved, the defendants went in appeal before the Additional District Judge, Karnal, who on re-appraisal of the evidence allowed the appeal, reversed the findings on Issues 1 to 3, set aside the judgment and decree of the trial Court; and dismissed the suit of the plaintiffs leaving the parties to bear their own costs.

7. The plaintiffs being dissatisfied with the judgment and decree of the first appellate Court, dated June 2, 1979, has filed this appeal.

8. I have heard the learned counsel for the parties and have scrutinised the record.

9. It was argued by the learned counsel for the appellants that the lower appellate Court reversed the well-reasoned findings of the trial Court merely on conjectures and surmises without appreciating the pleadings and the evidence adduced by the parties. According to the learned counsel, the first appellate Court has mainly relied upon the documents Exhibits D1 to D3 which were neither relied upon nor were they produced from proper custody. There was no explanation much less proper, for late production of these documents. The learned Additional District Judge acted on wrong assumption of law that the documents which have been exhibited, are to be relied upon. According to the learned counsel such an inference is not warranted by law. As such, findings recorded by the lower appellate Court are erroneous and unsustainable in the eye of law.

10. It may be pointed out that on November 9, 1976 counsel for the defendants made a statement before the trial Court admitting the description of the property given in the plaint as correct. Therefore, the identity of the suit house is not in dispute and in view of the fact that the plaintiffs have filed the suit for seeking possession of the house from the defendants, leaves no manner of doubt that defendants, according to the plaintiffs themselves, are in possession of the house in dispute.

11. By now, it is well settled that a plaintiff is to stand on his own legs. He has to lead cogent and convincing evidence admissible in law in order to secure the relief prayed for and cannot take advantage of the weakness of the defendant.

12. Precisely, the case of the plaintiffs as set up in the plaint, is that the suit property was purchased by them from one Shobha Ram alias Shobi Ram son of Shambhu Dutt resident of Village Gumthala Garhoo, vide sale deed, dated April 18, 1972, Exhibit P1 and, as such, they are owners of it. The execution of sale deed, Exhibit P1, by Shobha Ram alias Shobi Ram, according to the plaintiffs, is duly proved. Before purchasing any property or interest therein, a vendee is expected to verify the title of the vendor and satisfy himself that the title to be acquired is not visited by any defect. In order to prove that the appellants had acquired a valid title to the property from Shobha Ram alias Shobi Ram vendor vide sale deed, dated April 18, 1972, Exhibit P1, it was incumbent upon them to prove that Shobha Ram alias Shobi Ram himself was having a perfect title to the

suit property. A perusal of the plaint would show that it was nowhere pleaded whether the property in question was self-acquired property of Shobha Ram alias Shobi Ram or it had come to him by inheritance or from some other source, i.e., by way of Will or gift etc. It was also not pleaded that Shobha Ram alias Shobi Ram ever remained in possession of the suit property. It is cardinal principle of civil law that no amount of evidence in support of a plea which does not form part of the pleadings, can be taken into consideration. In order to prove that Shobha Ram alias Shobi Ram resided in the house in question as owner, reliance was placed by the plaintiffs on Voters List Exhibit PW3/1 proved by Krishan Gopal (PW3). The Voters List pertains to the year 1965 wherein Shambhu Dutt father of Shobha Ram is recorded as a voter. Placing reliance on Exhibit PW3/1, the trial Court arrived at a conclusion that Shambhu Dutt having been registered as a voter in this house, it is Shambhu Dutt who is deemed to be owner of the said house and, as such Shambhu Dutt had a right to sell the suit property. The learned counsel for the appellants has contended that the finding of the trial Court is well founded and the learned Additional District Judge has wrongly reversed that finding. There is no force in this contention.

13. At the outset, it may be pointed out that the sale deed, Exhibit P1, was executed by Shobha Ram alias Shobi Ram in favour of the appellants and not by his father Shambhu Dutt. From the entry in the Voters List in respect of Shambhu Dutt as a voter in the year 1965 in the house in question, the only inference that can be drawn is that in the year 1965 Shambhu Dutt was residing in the house. No inference can be drawn that Shambhu Dutt was residing in that house even prior to the year 1965 or that he was residing in the said house as its owner. In the absence of reliable documentary evidence, no inference of title to the property can be drawn from the Voters List. Voters List is not and it cannot be a document of title. The inference drawn by the trial Court is erroneous and not well founded. The learned counsel for the appellants could not point out any other documentary evidence to show that Shambhu Dutt father of Shobha Ram alias Shobi Ram was having a valid title and was owner of the house in dispute. No documentary evidence is available on the record that the house was inherited by Shobha Ram alias Shobi Ram from his father Shambhu Dutt. It is pertinent to note that the sale deed, Exhibit P1, which forms the foundation of the claim of the appellants was executed by Shobha Ram alias Shobi Ram and not by his father Shambhu Dutt. Therefore, the conclusion of the trial Court that Shambhu Dutt is deemed to be owner of the suit property and he had a right to sell the same in favour of plaintiff-appellants is absolutely erroneous. It is well settled that a vendor cannot pass a title to the property better than he himself has. The appellants claim that they had purchased the suit property from Shobha Ram alias Shobi Ram through registered sale deed, dated April 18, 1972, Exhibit P1. Therefore, the sale deed, Exhibit P1 is not of any help to the appellants. The lower appellate Court has rightly concluded that the plaintiffs have miserably failed to prove the title of their predecessor-in-interest.

14. It was next argued that the lower appellate Court was not justified in placing

reliance on documents Exhibits D1, D2 and D3 and in arriving at a conclusion in favour of the defendant-respondents. It was contended that these documents were neither relied upon nor were these filed along with the written statement as envisaged under Order VIII, Code of Civil Procedure. It was urged that plaintiffs closed their evidence in affirmative on March 3, 1976, whereas these documents were produced on April 24, 1978. These documents were not produced even at the time of cross-examination of the witnesses of the plaintiffs. As such these documents were produced at a very belated stage and no explanation much less proper was put forth for late production of these documents. These documents were rightly left out of consideration by the trial Court and the lower appellate Court was not justified in placing any reliance on these documents and to draw inferences, as it did. The learned counsel, in support of his contention, cited *Union of India and Anr. v. B.D. Sharma* AIR 1989 183 (J & K). The argument of the learned counsel has no persuasive force. There is no doubt that the documents Exhibits D1, D2 and D3 were produced on April 24, 1978 after the plaintiff-appellants had concluded their evidence in affirmative on March 3, 1978. Ordinarily, the documents sought to be produced in evidence should be relied upon and filed along with the written statement. It is nowhere provided under Order VIII, Code of Civil Procedure, that if the documents are not produced at the time of filing the written statement, the same cannot be produced at a later stage of the proceedings. Therefore, no exception can be taken to the late production of the documents in the instant case. Exhibit D1 is dated June 22, 1939; Exhibit D2 is dated April 15, 1939 and Exhibit D3 is dated December 5, 1940. These documents were produced on April 24, 1978 by Naresh Kumar one of the defendants who appeared as DW1. Thus on the date these documents were produced, these were more than thirty years old to which all the necessary presumption are attached as provided u/s 90 of the Indian Evidence Act. In *B.D. Sharma's case* (supra), the documents were produced at a belated stage on which the witnesses of the plaintiff were sought to be cross-examined by the defendant, in that event the defendant was not allowed to produce the documents at a belated stage. In the case in hand, therefore, the case law cited is not helpful to the appellants. The contention raised by the learned counsel for the appellants, therefore, pales into insignificance.

15. Before the lower appellate Court, the learned counsel for the plaintiff-appellants could not dispute the legal proposition that once a document is exhibited it has to be taken into consideration. The lower appellate Court, therefore, was right in observing that the trial court was not justified in ignoring the said documents and not considering their effect on the rights of the parties and that once the documents have been tendered in evidence and exhibited as such, these cannot be left out of consideration. The conclusion arrived at to that effect by the learned Additional District Judge is affirmed. A perusal of Exhibit D1 would show that the house in question was under mortgage with Tota Ram son of Tiloka and Kali Ram from its owner Wadhao son of Rama. From Exhibits D2 and D3, it is proved that after the death of Tota Ram and Kali Ram mortgagees, Puni

widow of Tota Ram and Banti widow of Kali Ram further mortgaged their mortgagee rights in the house in favour of Chancier Shekhar son of Mathra Dass. Exhibit D1 shows that Wadhao son of Rama died issueless and the house in question was inherited by his nephew Chandan Ram who sold the same in favour of Chander Shekhar son of Mathra Dass for Rs. 99/-. In Replication, it was pleaded that Chander Shekhar made his "Sarvas Daan" of all his property to Shambhu Dutt father of Shobha Ram alias Shobhi Ram, but the plaintiffs did not opt to lead any evidence to prove that plea. It is not the case of the appellants that Chander Shekhar who made "Sarvas Daan" was a person other than husband of respondent No. 1 and father of other respondents. It is, therefore, proved that Chander Shekhar became the owner of the house in dispute by way of its purchase from Chandan Ram nephew of Wadhao, the original owner. Chander Shekhar was the husband of Vidya Wati defendant-respondent No. 1 and father of defendant-respondents 2 to 6. On the death of Chander Shekhar ownership rights devolved on the defendants and they became owners of the house in dispute. The oral evidence led by the appellants in the face of documentary evidence produced by the respondents is rendered insignificant. The lower appellate Court has rightly observed and concluded that the trial Court erred in holding the plaintiffs to be owners of the premises and that documents Exhibits D1, D2 and D3 taken together clearly prove title of Chander Shekhar to the property in dispute. The lower appellate Court was right and quite justified in setting aside the findings on Issues 1 to 3 recorded by the trial Court and in holding that the plaintiffs failed to prove their title and the defendants succeeded in proving the title of their predecessor-in-interest Chander Shekhar.

16. Issue No. 4 was decided against the defendants. It was held by the trial Court that plaintiffs had the locus standi to file the suit. The lower appellate Court did not advert to this Issue while deciding the appeal. It would suffice to say that once it is found that plaintiff-appellants are not owners of the house in dispute, they had no locus standi to bring the suit.

17. For the foregoing reasons, the appeal being meritless, is dismissed. No costs.