

**(1986) 08 P&H CK 0054**

**In the Punjab And Haryana At Chandigarh**

**Case No :** First Appeal No. 1817 of 1978, S.A. No. 1210 of 1982 and Civil Miscellaneous No"s. 885 CI and 886 CI of 1986

Piara Singh

APPELLANT

Vs

Jagtar Singh and Another

RESPONDENT

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**Date of Decision :** 06-08-1986

**Acts Referred:**

Foreign Exchange Regulation Act, 1973 — Section 31(1)

**Citation :** AIR 1987 P&H 93 : (1987) 13 ECC 259 : (1987) 2 ILR (P&H) 96 : (1987) 2 RCR(Criminal) 276 : (1987) 2 RCR(Rent) 223

**Hon'ble Judges :** Rajendra Nath Mittal, J

**Bench :** Single Bench

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**Judgement**

1. This judgment will dispose of R. F. A. No. 1817 of 1978, R. S. A. No. 1210 of 1982 and Civil Miscellaneous Applications Nos. 885-CI and 886-CI of 1986.

2. The facts as given in R. F. A. No. 1817 of 1978 are that Piara Singh was the owner of shop-cum-flat No. 21, Sector 26, Grain Market, Chandigarh. The plaintiffs purchased the said Flat from him for a consideration of Rs. 75,000/- on 22-11-1971. It is alleged that the defendant delivered possession of the ground floor to them on the same day which was let out by them to one Gulshan Rai Sapra. However, the defendant could not give vacant possession of the first and second floors of the building to them and consequently, he agreed to pay the rent at the rate of Rs. 400/- per mensem to them. They filed an eviction petition against the defendant regarding first and second floors of the building in which the defendant took a plea that there existed no relationship of landlord and tenant between the parties and that he was a trespasser in the building. consequently, they filed a suit for possession of the first and second floors of the building and for recovery of Rs. 14,000/- as damages for use and occupation with effect from 1-7-1973 till 30-6-1976 at the rate of Rs. 400/- per mensem.

3. The suit was contested by the defendant, who, inter alia, pleaded that the

property was in fact sold by him for a consideration of Rs. 1,50,000/- to plaintiffs but the sale deed was got executed in favour of the plaintiffs for a consideration of Rs. 75,000/- as they had no money to pay the balance amount. The plaintiffs' father Prem Singh agreed to pay balance amount of Rs. 75,000/- within a year and for that purpose he executed a document dt. 25-11-1971. It is further averred that their father agreed that if the remaining amount was not paid within the stipulated period, the sale deed would stand cancelled. The defendant further took a plea that the sale consideration had been brought to India by the father of the plaintiffs in contravention of Foreign Exchange Regulation Act and, therefore, the sale was void. Some other pleas were also taken but they do not survive in the appeal.

4. The learned trial Court held that whole of the building was sold by the defendant to the plaintiffs for a consideration of Rs. 75,000/- and the document alleged to have been executed by the father of the plaintiffs in favour of the defendant agreeing to pay Rs. 75,000/- more to him within one year and that if that amount was not paid within the stipulated period, the sale deed would stand cancelled, was not satisfactorily proved. It further held that no breach of Foreign Exchange Regulation Act (referred to as the Act) had been established. The other pleas taken by the defendant were also rejected. Consequently, it decreed the suit for possession of the first and second floors for the building and for recovery of Rs. 14,000/- The defendant has come up in appeal to this Court.

5. Mr. Anand Swaroop, learned counsel for the appellant, has argued that the sale consideration of the building was Rs. 1,50,000/- and not Rs. 75,000/-. Prem Singh father of the plaintiffs had agreed by a separate agreement to pay the amount of Rs. 75,000/- within a period of one year and in case he failed to do so, the sale deed would retain possession of the building. He further submits that the agreement mark "A" has been duly proved and from the document the above facts stand established.

6. I have duly considered the argument but do find not any substance therein. The sale deed was executed by the defendant in favour of the respondents on 22-11-1971 wherein the sale consideration is mentioned as Rs. 75,000/-. The whole of the consideration was paid by Prem Singh on behalf of the plaintiffs to the defendant in the presence of the Sub-Registrar. There is no mention in the sale deed that the sale consideration was Rs. Rs. 15,000/- out of which Rs. 75,000/- had been paid and the balance would be paid subsequently. In case there had been such an agreement, between the parties, as stated by Mr. Anand Swaroop, there was no reason as to why that was mentioned in the sale deed. It is well settled that after the execution and registration of a sale deed, the title of the property goes to the purchaser. Therefore, as soon as the sale deed was executed and registered, the title in the building goes to the plaintiffs.

7. There is doubt about the genuineness, of the document mark "A". It is alleged to have been executed by Prem Singh on the, same day on which the sale deed was executed. The said document, however, bears the date as

25-11-1971 and not 22-11-1971, the date of execution of the sale deed. Thus, the version of the defendant regarding the date of the execution of the document is falsified. Moreover, the execution of the document is not properly established. Prem Singh does not admit its execution. V. K. Sharma was its solitary attesting witness but for the reasons best known to the defendant he has not been examined. His non-production supports the version of the plaintiffs that it was never executed by Prem Singh. The defendant produced Shri Shanti Sarup, Handwriting Expert. D.W. 5 to prove the document. The learned trial Court did not rely on his testimony and in my view rightly. It is well-settled that the science of handwriting is not a perfect science. Therefore, evidence of a Handwriting Expert is received with great caution. Moreover, Shri Shanti Saroop Jain admitted that there were variations in the admitted signature and the disputed ones, and that the hand of the writer was not a set hand. In this situation the statement of a Handwriting Expert cannot be of much assistance. It is also relevant to point out that the stamp paper was not purchased by Prem Singh. It has not been brought on the record as to who purchased the stamp paper. In the circumstances it cannot be held that mark "A" was executed by Prem Singh.

8. Even if, it may be assumed that the document was executed by him, he had no right to do so as he had not power of attorney from the plaintiffs on the date when the document is alleged to have been executed. The power of attorney was given to him by Kuldip Singh on 31-3-1975 and by Jagtar Singh on 21-12-1975. Thus the defendant-appellant also does not get any rights under the document. For the aforesaid reasons, I reject the submission of Mr. Anand Swaroop and affirm the finding of the trial Court.

9. The next argument of Mr. Anand Swaroop is that the property in favour of the plaintiffs is invalid under sub-section (1) of S. 31 of the Act, and therefore, they are not entitled to obtain its possession.

10. I have given my thoughtful consideration to the argument but do not find any merit in it. In order to decide the matter, it is necessary to read the relevant portion of the said sub-section (1) of S. 31 of the Act which is as follows:--

""31(1). No person who is not a citizen of India and no company other than a banking company which is not incorporated under any law in force in India or in which the non-resident interest is more than forty per cent, Shall; except with the previous general or special permission of the Reserve Bank. acquire or hold or transfer or dispose of by sale, mortgage, lease. gift. settlement or otherwise any immovable property situate in India:

Provided that nothing in this sub-section shall apply to the acquisition or transfer of any such immovable property by way of lease for a period not exceeding five years.""

11. It is true that the section provides that without the previous permission of the Reserve Bank, a person who is not a citizen of India, cannot acquire property,

but it does not provide that if someone purchases any property the title therein does not pass to him. What the Act provides is that if a person contravenes S. 31 and some other sections, he can be penalized under S. 50 and can also be prosecuted under S. 56. However, there is no provision in the Act which makes transaction void or says that no title in the property passes to the purchaser in case there is contravention of the provisions of sub-section (1) of S. 31. Section 63 contains a provision regarding confiscation of certain properties but it does not contain any provision for confiscation if there is breach of the provisions of sub-section (1) of S. 31. Therefore, the property purchased in contravention of sub-section (1) of S. 31 is also not liable to confiscation. In the circumstances, it cannot be held that the plaintiffs are not entitled to obtain possession of the property or recover damages for its use and occupation.

12. The matter may be examined from another angle. Even if the transaction is invalid, the plaintiffs have been given a certificate dt. 10-9-1981 by the Reserve Bank of India exercising its powers under sub-section (1) of S. 31 of the Act. It is stated in the certificate that Jagtar Singh and Kuldip Singh sons of Prem Singh, 113, Sector 11-A, Chandigarh, are authorised to hold shop-cumflat 71, Grain Market Sector 26, Chandigarh, and do business after coming to India for permanent settlement. It is evident from the certificate that the plaintiffs are entitled to hold the said property. Therefore, if there was any illegality in the purchase, the same has been legalized by the Reserve Bank by giving the certificate to them.

13. The appeal was filed in 1978 whereas the certificate has been issued in 1981. The plaintiffs therefore moved Civil Miscellaneous No. 885-CI of 1986 under O. 41, R. 27 and S. 151 of Civil P.C. praying that the document be taken on the record. It is well-settled that a Court in the interest of justice can take into consideration subsequent events. In the above view I am fortified by the observations of the Federal Court in AIR 1941 5 (Federal Court), wherein it was observed that hearing of an appeal under the procedural law of India is in the nature of re-hearing and therefore in moulding the relief to be granted in a case on appeal, the appellate Court is entitled to take into account even facts and events which have come into existence after the decree appealed against. Consequently, I accept the application, take the certificate on the record and mark it as Exh. P.A. In Civil Misc. No. 886-CI of 1986, it is stated that the applicant would produce the original certificate after the application for additional evidence is allowed. Consequently, it is prayed that the filing of the original certificate be dispensed with for the time being. The plaintiffs have since filed the original certificate. Therefore, the civil miscellaneous has become infructuous.

14. The rate of damages has not been challenged in the appeal before me. Consequently, I do not find any merit in the appeal.

15. Now I advert to R.S.A. No. 1210 of 1982. The plaintiffs have filed this suit for damages at the rate of Rs. 500/- per mensem for the period from 1-7-1976 to 31-7-1977 regarding the property in dispute. The trial Court decreed the suit for

recovery of Rs. 5,200/-. The appeal by Piara Singh was dismissed by the Additional District Judge. He has come up in second appeal to this Court.

16. No additional argument has been raised in the appeal by Mr. Anand Swaroop.

17. For the reasons already mentioned, I do not find merit in this appeal too. Consequently, I dismiss both the appeals with costs.

18. Appeals dismissed.