
(2010) 07 P&H CK 0223
In the Punjab And Haryana At Chandigarh

Suraj Bhan and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 27-07-2010

Acts Referred:

Registration Act, 1908 — Section 17, 17(1)

Citation : (2010) 07 P&H CK 0223

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—This is second appeal by plaintiffs, who were successful in the trial court, but have been partly unsuccessful in the lower appellate court.

2. Appellants filed suit for permanent injunction against respondents i.e. State of Haryana and Tehsildar (Sales) alleging that the appellants/plaintiffs are owners in possession of the suit land measuring 6 biswas, as their fore-fathers had purchased it from its previous owner Yunus Khan before partition of India by paying total sale consideration of Rs. 1200/-, vide receipt dated 03.02.1947, although purchase was made even prior to 1940. Thus, Yunus Khan ceased to have any right in the suit land before 15.08.1947 - the date of independence of the country and therefore, the suit property was not evacuee property. Accordingly, plaintiffs sought permanent injunction restraining the defendants from interfering in ownership and possession of the plaintiffs over the suit land in any manner and from auctioning the same.

3. The defendants inter alia pleaded the suit property was evacuee property and was in possession of Ravi Dutt (predecessor of some of the plaintiffs) as gair marusi. Prior to year 1947, Muslims were owners of the suit land and on their migration to Pakistan, the suit property being evacuee property, vested in Custodian and now Rehabilitation Department, who has every right to dispose of the suit property. No mutation of ownership of the suit property was entered in

favour of predecessor-in-interest of the plaintiffs. Defendants are rightful owners of the suit property. Various other pleas were also raised.

4. Learned Civil Judge (Junior Division), Gurgaon, vide judgment and decree dated 23.10.2008, decreed the plaintiffs' suit thereby restraining the defendants from interfering in ownership and possession of the plaintiffs over the suit land and from auctioning the same. First appeal preferred by the defendants has been partly allowed by the learned Additional District Judge, Gurgaon, vide judgment and decree dated 06.03.2009 and thereby, defendants have been restrained from auctioning the suit land till plaintiffs are dispossessed therefrom in due course of law. However, prayer of the plaintiffs that they are owners of the suit land has been declined. Feeling aggrieved, plaintiffs have preferred the instant second appeal.

5. I have heard learned Counsel for the parties and perused the case file.

6. Learned Counsel for the appellants vehemently contended that vide receipt dated 03.02.1947 and entry thereof in Roznamcha Patwari, as proved in evidence, plaintiffs' fore-fathers purchased the suit land from the Muslim owner Mohd. Yunus Khan before partition of the country and therefore, the suit land was not evacuee property and plaintiffs are owners in possession of the suit property.

7. On the other hand, learned State counsel for respondents contended that the suit property has been continuously recorded to be evacuee property in the revenue record since after partition of the country and the plaintiffs or their predecessors could not have become owners of the suit property merely through receipt regarding alleged payment of sale consideration to the Muslim owner or through entry in Roznamcha Patwari.

8. I have carefully considered the rival contentions. In view of Section 17 of the Indian Registration Act (in short the Act), ownership in the suit land could not pass from the Muslim owner in favour of the plaintiffs' predecessor without registered sale deed as the sale consideration was Rs. 1200/- i.e. more than Rs. 100/-. In view of Section 17(1) of the Act, title in the suit property can be transferred only by registered gift deed, where immovable property is of the value of Rs. 100/- and upwards.

9. In the instant case, admittedly, there is no registered sale deed in favour of plaintiffs' predecessor. Consequently, merely on the basis of receipt regarding alleged payment of sale consideration, plaintiffs' predecessor or the plaintiffs could not become owners of the suit land. Therefore, there is no infirmity in the finding of the lower appellate court that plaintiffs are not owners of the suit land. It may be added that even according to the plaint allegations, Yunus Khan, from whom the plaintiffs' predecessor allegedly purchased the suit land, had only half share in the suit land and there is no plea or evidence to depict as to how plaintiffs became owners of the remaining half share of the suit land.

10. For the reasons aforesaid, I find no merit in the instant second appeal. Learned lower appellate court has rightly held the plaintiffs to be not owners of the suit land. The said finding does not require interference in second appeal. No question of law, much less substantial question of law, arises for determination in the instant second appeal. Even taking the version of the plaintiffs at face value, they cannot be said to be owners of the suit land. Consequently, the instant second appeal is hereby dismissed.