

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

Reserved on: January 21, 2025
Pronounced on: January 30, 2025

RSA No.2733 of 2022 (O&M)

Suresh (since deceased) through his LRs **Appellant**
Vs.

Mahinder (since deceased) through his LRs **Respondent**

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Keshav Pratap Singh and
Mr. Nitin Sansanwal, Advocates for the appellant.

DEEPAK GUPTA, J.

Unsuccessful plaintiff – Suresh (*now appellant through his LRs*) has approached this Court by way of the present regular second appeal against the concurrent findings of the Courts below, inasmuch as the suit filed by him seeking decree for possession along with mandatory and permanent injunction of the suit property against sole defendant – Mahinder (*now respondent through his LRs*) was dismissed by the trial Court vide judgment dated 17.08.2017 and the appeal filed by the said plaintiff was dismissed by the First Appellate Court on 11.04.2022.

2. In order to avoid confusion, parties shall be referred as per their status before the trial Court. Trial Court record was called and the same has been perused.

3. Subject matter of the dispute is a plot bearing number 354 measuring 318 Sq. yards situated within the *abadi deh* of village Sitawali, Tehsil and District Sonapat, shown by letter 'ABCD' in the site plan attached with the plaint.

4. Plaintiff claimed to be the owner of the suit property, on which his father had constructed two rooms and a boundary wall during his life

time. His father had died in 1998 and thereafter, it was inherited by him. Plaintiff alleged that in the month of November, 2009, when he was away from his home, the defendant forcibly took possession thereof and installed his old electricity meter connection in the plot from other residential house and also started raising construction on the disputed property without having any right to do so. Plaintiff prayed for decree of possession.

5. Defendant in written statement disputed the claim of the plaintiff. According to him, father of the plaintiff had sold the suit property to him (*defendant*) vide an unregistered sale deed/full payment agreement dated 05.06.1993 and had delivered physical possession thereof. After taking possession, defendant raised construction thereon, installed electricity connection in name of his son and ever since then, he is using the same being owner in possession thereof. He also claimed that his possession over the suit property was hostile to the knowledge of father of the plaintiff till 1998 and thereafter to the knowledge of the plaintiff, which is now more than 12 years and therefore, in alternative, he has become owner of the suit property by way of adverse possession. He prayed for dismissal of the suit.

6. Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court found that vide a full payment agreement (Ex.D1), father of the plaintiff had sold the suit property to the defendant on 05.06.1993, which not only bears the thumb impression of Chattar Singh, the father of the plaintiff, but also the signatures of plaintiff himself as an attesting witness. It was further found that the possession of the suit property was delivered to the defendant at that time. The assertion of the plaintiff to the effect that he was dispossessed by the defendant in 2009 was held to be not proved. It was thus found that defendant had purchased the suit property by virtue of an unregistered sale deed. It was also held that plea of adverse possession as claimed by the defendant was not available to him. However, the plaintiff was non-suited on the ground that he did not have any cause of action or *locus standi* and that he had not come to the Court with clean hands. With these findings, the suit was dismissed by the trial Court.

7. Before the First Appellate Court, contention was raised on behalf of the appellant-plaintiff that possession of the defendant over the suit property was permissive. Said contention of the appellant was found by the Appellate court to be contrary to para No.3 of the plaint, in which it was clearly alleged by the plaintiff that defendant had taken forcible possession of the suit property in 2009, when he was away from the village. First Appellate Court further held that trial Court had rightly held that plaintiff was estopped from filing the present suit, as by virtue of Ex.D1, his father had sold the property through an unregistered document, but by denying the execution thereof, and by claiming that he was forcibly dispossessed by the defendant, plaintiff had not come to the Court with clean hands and that he did not have any *locus standi* or cause of action to file the suit. Affirming the findings of the trial Court, the First Appellate Court dismissed the appeal of the plaintiff vide judgment dated 11.04.2022.

8. Assailing the aforesaid judgments of the Courts below, it is contended by learned counsel for the appellant that document Ex.D1 on which the Courts below have relied, is an unstamped and unregistered document and therefore, it cannot be looked into for any purpose whatsoever, in view of Section 35 of the Stamp Act and Section 49 of the Registration Act. Learned counsel for the appellant has referred to “**Avinash Kumar Chauhan v. Vijay Krishna Mishra**”, **Law Finder Doc Id # 178470**. It is further contended that mere delivery of possession without registered instrument cannot confer any title of the immovable property worth more than ₹100/- and as such, defendant cannot claim to have become owner of the property in dispute on the strength of Ex.D1. Still further, it is argued that since Ex.D1 is unregistered instrument, therefore, defendant cannot protect his possession, as there is nothing to show that after execution of Ex.D1 on 05.06.1993, defendant had done anything in part performance of the agreement (Ex.D1). For this purpose, learned counsel has referred to “**Shrimant Shamrao Suryavanshi and another v. Pralhad Bhairoba Suryavanshi (Dead) by LRs and others**” **Supreme Court Cases (2002) 3 SCC** and “**A. Manicka Mudaliar v. Murugesha Mudaliar and another**”, **2012-2**

L.W. 28 (High Court of Madras). Contending that the Courts below have failed to appreciate the factual and legal position in right perspective; and with the aforesaid submissions, counsel for the appellant prayed for setting aside the impugned judgments of the Courts below and to accept the present appeal, thereby decreeing the suit of the plaintiff-appellant.

9. I have considered submissions of learned counsel for the appellant and have appraised the entire record including the trial Court record carefully.

10. It is not in dispute that earlier Chattar Singh, the father of the plaintiff was the owner of the suit property. According to defendant, the father of the plaintiff had sold the said property to him (defendant) by virtue of an unregistered sale deed dated 05.06.1993 (Ex.D1). Perusal of Ex.D1 reveals that it is purported to have been executed by Chattar Singh, i.e. father of the plaintiff in favour of defendant – Mahinder. It is not only signed by Ramphal, Sarpanch of the village, but further attested by Dhoop Singh, Sube Singh and also by plaintiff Suresh himself. Although, plaintiff – Suresh in his testimony denied the execution of Ex.D1 by his father and even denied his own signature on the said document, but he admitted that Ramphal, used to be Sarpanch of the village in the year 1993 and that Sube Singh and Dhoop Singh belong to his village.

11. Defendant – Mahinder in his testimony not only proved the execution of Ex.D1 by father of the plaintiff, he also deposed that said Ex.D1 was scribed by Ramphal, Sarpanch. Defendant had also examined not only Ramphal, Sarpanch as DW2, but further examined another witness, namely, Dhoop Singh as DW6, both of whom proved the execution of Ex.D1 by Chattar Singh, the father of the plaintiff in favour of the defendant. Not only this, defendant further examined Sh. B.N. Srivastav, Handwriting & Finger Print Expert as DW7, who after comparing the admitted signature of plaintiff with the disputed signature on Ex.D1 proved that Ex.D1 is signed by the plaintiff.

12. Thus, it stands proved that the plaintiff himself was signatory to the writing Ex.D1, whereby his father Chattar Singh had sold the suit property to the defendant. Learned counsel of the appellant has not seriously disputed the findings of the trial Court in this regard, i.e. the execution of Ex.D1 by the father of the appellant in favour of the respondent-defendant.

13. It is further important to note that as per the case of the plaintiff, in 2009, defendant had taken forcible possession of the suit property. However, in his cross-examination, plaintiff-PW1 candidly admitted that electricity meter was got installed in the suit property by defendant – Mahinder 10-12 years back, whereas the suit was filed by him two years back, which means that the electricity connection was installed by the defendant in the suit property at least 10 years prior to filing of the suit. Since the testimony of plaintiff was recorded in October, 2014, it means that the said electricity meter was taken at least in 2002 or prior thereto. Defendant had also produced DW4 Jaipal, an official of the Electricity Department, who corroborated the statement of defendant to the effect that the electricity connection had been released in the year 1998 in the name of Rajesh, son of defendant - Mahinder in the suit property.

14. Thus, it stands established that the possession of suit property was delivered to the defendant in 1993 after execution of Ex.D1. The said fact is also mentioned in Ex.D1 that possession had been delivered to the vendee – Mahinder. It is very important to notice that although in the plaint, plaintiff claimed his forcible dispossession in 2009, but before the First Appellate Court, he took the plea that defendant was in permissive possession of the suit property, without explaining as to in what circumstances and when the permissive possession was given. The said contradictory stand as taken by the plaintiff is absolutely irreconcilable and so, he cannot be believed in this regard.

15. Now once it is proved that suit property was sold in 1993 by the father of the plaintiff to the defendant by virtue of an unregistered document and that possession of the defendant is fully established on the suit property

since much prior to the filing of the suit, the entire case revolves around the effect of an unregistered document Ex.D1. Ex.D1 has been written on ₹10/- stamp paper. By virtue of this document, suit property had been sold for consideration of ₹25,000/- and possession delivered to the vendee, i.e. defendant. Since the document is unregistered, there can be no doubt in holding that defendant on the basis of Ex.D1 cannot claim to have become owner of the suit property because any unregistered document transferring immovable property of more than ₹100/-, cannot convey the title to the vendee. In ***Avinash Kumar Chauhan's case (supra)***, it has been held by Hon'ble Supreme Court that an under stamped and unregistered sale deed is neither admissible in a suit for specific performance nor for recovery of consideration money nor for any collateral purpose.

16. No doubt, it is true that Ex.D1 is executed on an insufficiently stamp paper, but it is very important to notice that when Ex.D1 was taken in evidence, no specific objection was raised on behalf of the plaintiff that said document was liable to be not admitted in evidence due to it being insufficiently stamped. As such, at this stage, plaintiff-appellant cannot be allowed to raise this plea before this court in second appeal for the first time.

17. One of the contentions raised by learned counsel for the appellant is that since defendant has not performed anything in part performance of Ex.D1, therefore, he is not entitled to protect his possession.

18. In ***Shrimant Shamrao Suryavanshi's case (supra)***, it has been held by Hon'ble Supreme Court as under:-

“15. The Special Committee's report which is reflected in the aims and objects of the amending Act, 1929 shows that one of the purposes of enacting Section 53-A was to provide protection to a transferee who in part-performance of the contract had taken possession of the property even if the limitation to bring a suit for specific performance has expired. In that view of the matter, Section 53-A is required to be interpreted in the light of the recommendation of the Special Committee's report and aims, objects contained in the amending Act, 1929 of the Act and specially when Section

53-A itself does not put any restriction to plea taken in defence by a transferee to protect his possession under Section 53-A even if the period of limitation to bring a suit for specific performance has expired.

16. But there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act. The necessary conditions are:

- (1) there must be a contract to transfer for consideration of any immovable property;
- (2) the contract must be in writing, signed by the transferor, or by someone on his behalf;
- (3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained;
- (4) the transferee must in part-performance of the contract take possession of the property, or of any part thereof;
- (5) the transferee must have done some act in furtherance of the contract; and
- (6) the transferee must have performed or be willing to perform his part of the contract.

17. We are, therefore, of the opinion that if the conditions enumerated above are complied with, the law of limitation does not come in the way of a defendant taking plea under Section 53-A of the Act to protect his possession of the suit property even though a suit for specific performance of a contract is barred by limitation.”

19. In ***A. Manicka Mudaliar's case (supra)***, the Madras High Court held that the fulfillment of all the six conditions as laid down above by Hon'ble Supreme Court in ***Shrimant Shamrao Suryavanshi's case (supra)*** is mandatory.

20. After perusing the entire evidence on record of this case, I find that reliance of learned counsel for the appellant on Section 53-A of the

Transfer of the Property Act, which speaks of the part performance of the contract, is absolutely misplaced.

21. Section 53A of the Transfer and Property Act deals with part performance, when a person contracts to transfer for consideration any immovable property in writing signed by him. It does not speak of the complete sale. Perusal of Ex.D1 dated 05.06.1993 would reveal that father of the plaintiff had sold the suit property to the defendant for consideration of ₹25,000/- and had delivered possession to him. Nothing was required to be done on the part of the defendant as per the document (Ex.D1). The only thing is that the said Ex.D1 is an unregistered document and therefore, Court is required to see the effect of non-registration of document Ex.D1.

22. It has been rightly observed by the Appellate Court that though this document Ex.D1 purports to convey title in respect of an immovable property valuing more than ₹100/- and so it cannot be taken into consideration for the purpose of conveying the title being an unregistered document but it can certainly be looked into for collateral purposes in view of proviso to Section 49 of the Registration Act, which reads as under:

“Effect of non-registration of documents required to be registered.— No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) **or as evidence of any collateral transaction not required to be effected by registered instrument.”**

23. In "*S. Kaladevi v. V.R. Somasundaram and Others*" 2011(1) LJR 712, it has been held by Hon'ble Supreme Court that unregistered document can be looked into for collateral purposes, as per Section 49 of the Registration Act. It was held as under:

11. The main provision in [Section 49](#) provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. Proviso, however, would show that an unregistered document affecting immovable property and required by 1908 Act or the [Transfer of Property Act, 1882](#) to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs. 100/- and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to [Section 49](#) of 1908 Act.

12. Recently in the case of *[K.B. Saha and Sons Private Limited v. Development Consultant Limited \(2008\) 8 SCC 564](#)*, this Court noticed the following statement of Mulla in his [Indian Registration Act](#), 7th Edition, at page 189:-

".....The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court at Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under [Section 17](#) and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it....."

This Court then culled out the following principles:-

"1. A document required to be registered, if unregistered is not admissible into evidence under [Section 49](#) of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to [Section 49](#) of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."

To the aforesaid principles, one more principle may be added, namely, that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance.

24. It is, thus, clear from the legal position as above that though an unregistered document is not admissible into evidence, but it can be used as an evidence for collateral purpose as provided in the proviso to [Section 49](#) of the Registration Act. The collateral transaction must be independent of, or divisible from, the transaction to effect which, the law required registration. Thus, a collateral transaction must be a transaction not itself required to be effected by a registered document, i.e., a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

25. Since in order to deliver possession of immovable property, the document is not required to be registered as per law, therefore, an unregistered sale deed Ex.D1 can be taken into consideration for collateral purpose i.e., delivery of possession. In these facts and circumstances, the Appellate Court did not commit any error in coming to the conclusion that document

Ex.D1, could have been looked into for collateral purposes in view of proviso to Section 49 of the Registration Act.

26. Apart from above, in ***“Ude Singh and Ors. v. Ram Chander” 2009 (1) RCR (Civil) 41***, it has been held by this Court that plaintiff is estopped from reclaiming possession on the ground that there was no valid sale deed, when sale deed was an unregistered receipt. It was also held that no title could be conferred on the basis of such an unregistered deed but Section 115 of the Evidence Act estopped the plaintiff from claiming possession in lieu thereof.

27. Besides above, this Court further finds that plea of the defendant-respondent to have become owner of the suit property by way of adverse possession, has been wrongly negated by the Courts below.

28.1 In ***“Utha Moidu Haji Vs. Kuningarath Kunhabdulla”(SC) 2006 (14) Scale 156***, it has been held by Hon'ble Supreme Court that when a person enters into possession of land under void or voidable transaction, his possession becomes adverse from the date, he comes into possession and that starting point of limitation of the adverse possession is, when he enters into possession under such a void or voidable transaction.

28.2 In the above case before Hon'ble Supreme Court, defendants No.2 to 8 sold land in dispute vide registered sale deed dated 30.08.1963 not only on their behalf but also on behalf of the minor child (plaintiff), in favour of X. Plaintiff attained majority on 30.07.1974 and filed the suit for setting aside the sale deed on 18.03.1981. Hon'ble Supreme Court held that plaintiff would be deemed to have knowledge about the execution of the sale deed on his attaining majority, as soon as he pleaded and proved that his case comes within the purview of the exception contained in the provisions of Limitation Act. The period of limitation would be either three years from the date of attaining majority by the plaintiff or 12 years from the date of execution of sale deed. As plaintiff had filed the suit after sleeping for six years over his right to sue, the suit was held to be barred by Article 60 (a) of the Limitation Act.

29. In the present case, as defendant started claiming ownership of suit property on the basis of unregistered sale deed dated 05.06.1993 (Ex.D1) and the said document is found to be void being unregistered on account of the fact that it purports to create title in respect of an immovable property of value more than ₹100/-, therefore, the possession of the defendant became adverse from the very date of execution of this document, in view of the legal position explained in ***Utha Moidu Hajji's case (supra)***. Said possession was open, continuous and uninterrupted and became hostile to the true owner i.e., father of plaintiff since 1993 upon execution of Ex.D1 and then to the knowledge of the plaintiff after the death of his father in 1998, as defendant had started claiming to be owner of the suit property on basis of Ex.D1, an unregistered document.

30. In case a suit is filed on the basis of inheritance, defendant can set up a plea of adverse possession. In such a case, suit is to be filed within 12 years and the time begins to run, when the possession of the defendant becomes adverse to the plaintiff, as per Article 65 of the Schedule to the Limitation Act, 1963. Reliance in this regard can be placed upon ***Mohinder Singh (died) and Rep. by his LRs and another Vs. Kashmira Singh 1985 PLJ 82***, wherein it was held by a Division Bench of this High Court as under:-

“After hearing the learned counsel for the parties, I find force in the contention of the learned counsel for the respondent. It is well established principle of law that inheritance does not remain in abeyance and the heirs after the death of the last male holder succeed to the property of the deceased in accordance with law. Kashmira Singh, being the son of Niranjana Singh deceased, was entitled to 1/3rd share in the land in dispute. After the death of Niranjana Singh, he was not required to file any suit for possession on the basis of inheritance. He had become full owner of his share in the property on the death of the last male holder. For establishing his right as an heir, he was not required to file a suit. However, a situation may arise when the heir is not in possession of the property inherited. In that event a suit for possession may have to be filed and on contest the same may fail on the defendant proving that he has perfected his title by adverse possession. It is

such type of suit which is governed by the provisions of Article 65 of the Limitation Act.”

31. In *Amar Chandra Vs. Kamla Devi and another, 2015 (51) RCR (Civil) 769*, it has been held by Allahabad High Court that on the issue of restoration of possession, limitation would be reckoned from the date, one is dispossessed or when the defendants' possession become adverse.

32. Similarly, in *Qadir Bux v. Ramchand and others, AIR 1970 Allahabad 289*, the High Court has held that in order to attract Article 65, if a person has got possession even if under a void sale, his possession would be adverse to the real owner and by possessing for more than 12 years, he acquires title by adverse possession. Any action against him by real owner has to be filed within 12 years of such possession, otherwise suit for possession would be barred by limitation. For the purpose of a declaration, limitation commences from the date of cause of action. Similarly, for the purpose of restoration of possession, limitation would commence from the date from which one is dispossessed or the defendant's possession becomes adverse.

33. In the present case, as it has been found that defendant is in possession since 1993 by virtue of an unregistered document (Ex.D1), which is a void document, as such, his possession is hostile ever since then. His possession has remained peaceful, open, hostile and continuous to the knowledge of the true owner, i.e. father of plaintiff and then plaintiff, who had inherited the property from his father Chattar Singh. Said possession has matured into the ownership of the defendant after the expiry of statutory period of 12 years of limitation and as such, the suit filed by the plaintiff in 2010 is clearly barred by limitation.

34. Based upon the entire discussion as above, this Court does not find any illegality and perversity in the findings recorded by the Courts below, but at the same time, it is added that defendant-respondent had become owner of the suit property by way of adverse possession.

35. Consequently, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

January 30, 2025

Sarita

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	Yes