

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

**CSA No. 16/2009
CMP Nos. 31/2009 & 19/2009**

Date of Decision: 17.11.2009

Bilal Ahmed & anr. ***Vs.*** ***Bashir Ahmed Bhat***

CORAM:

MR. JUSTICE J. P. SINGH, JUDGE.

Appearing Counsel:

For Appellant(s) : Mr. K.S.Johal, Advocate.

For Respondent(s): Mr. V.R.Wazir, Advocate.

i) Whether approved for reporting in Press/Journal/Media : **Yes/No**

ii) Whether to be reported in Digest/Journal : **Yes/No**

The dispute giving rise to this Civil Second Appeal pertains to one Marla of land comprised in Khasra No. 113-min, situated at Village Thana Mandi, Rajouri, and a shop constructed thereon.

According to the appellants, they were in permissive possession of the Suit land, which was part of one kanal five marlas of land, handed over to them by the respondent-vendor's father Vishwanath, pursuant to an Agreement to sell executed in this behalf, after receiving full consideration therefor, and the respondent's Suit for possession of the Suit land, on the basis of the Sale Deed executed by Vishwanath's Son, Sohan Lal, in his favour, was thus not maintainable, in that, being out of

possession, Sohan Lal had no right to convey the Suit land, to the respondent by sale.

To decide the Suit between the parties, the trial Court had put them to issues, which read thus:-

1. Whether the plaintiff is the owner of the Suit shop and the land underneath it? OPP
2. Whether the defendant has occupied the Suit shop forcibly by installing shutter and taking the possession thereof? OPP
3. Whether the Suit in present form is not maintainable? OPD
4. Relief.

After evaluating the evidence led by the parties in the Suit and the documents placed on its records, the trial Court recorded its finding on issue No.1 in favour of the respondent, *inter alia*, holding that at the time of Sohan Lal's father's executing the Sale Deed for one kanal four marlas of land, on 09.02.1981, one marla had been left out of the sale, thereby nullifying the Agreement to Sell dated June 29, 1976, on which the appellants had raised the plea of their permissive possession.

While deciding Issue No.2, the trial Court held, on facts, that the appellants had forcibly occupied the shop constructed by the respondent, by installing a shutter against it.

Holding the respondent's Suit maintainable and deciding Issue No.3 against the appellants, the trial Court accordingly decreed the respondent's Suit vide its Decree of September 30, 2003.

The Appellate Court has upheld the findings recorded by the trial Court, though giving its own views while deciding Issue No.1 against the appellants.

Aggrieved by the Decrees of the Sub-ordinate Courts, the appellants have filed this Civil Second Appeal, seeking dismissal of the respondent's Suit.

Appellants' learned counsel submitted that having permitted the appellants to remain in possession of the Suit land, which was part of one kanal five marlas of land, which had been agreed to be sold to them, by Mr. Vishwanath, the owner of the land, Sohan Lal, Vishwanath's Son, being out of possession thereof, had no right to convey by sale, the Suit land to the respondent, which, despite Vishwanath's receiving full consideration, had not been sold to them, at the time of his executing Sale Deed for one kanal four marlas of land in favour of the appellants.

I have considered the submissions of learned counsel for the parties and perused the records.

Appellants' counsel's submission that Vishwanath, the owner of the land, having accepted full sale consideration and permitted the appellants to enjoy the possession of the land including the Suit land, since the execution of the Agreement to Sell, his successor-in-interest, had no right to sell the land to the respondent, to deprive the appellants of their right of permissive possession over the Suit land, looked attractive, at the first flush, but was, later, found without any substance, in that, the very basis of the appellants' submission of being in possession of one marla of land all through, along with rest of one kanal four marlas of land, was not borne out from the records, and the evidence produced by the parties in the trial Court. Not only this, the document i.e. the Sale Deed dated 09.02.1981, which Vishwanath had executed in favour of the appellants for one kanal four marlas of land, specifically recorded the owner to have left one marla of land from the purview of the sale which he had intended to make in favour of the appellants. The Sale Deed acknowledges the appellants to be in possession of only one kanal four marlas of land and not of one kanal five marlas on which premise the learned counsel had raised his submission.

Such being the case, the very basis on which the appellants' counsel had built his argument of appellants being in possession of one kanal five marlas of land all through, having not been supported by his own document, i.e. Sale Deed, the submission made by the appellants may not thus require consideration, for admitting this Civil Second Appeal to hearing, as no other question of law much less substantial question of law, other than the one projected by the learned counsel has either been raised or found arising in the case, in that, the factual findings of the two Courts, that the appellants were not in possession of the Suit land and had forcibly occupied the shop constructed by the respondent, cannot be questioned in the Civil Second Appeal, in view of the provisions of Section 100 of the Code of Civil Procedure which permits lying of the Civil Second Appeal only if the case involved a substantial question of law, which does not arise in the appellants' Appeal.

No ground for admission of the Civil Second Appeal, to hearing has thus been made out.

This Appeal is, accordingly, dismissed in limine.

(J. P. Singh)
Judge

JAMMU
17.11.2009
Pawan Chopra

