

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.1449 of 1991

Reserved on : 18.03.2024

Date of Decision: 01.04.2024

Mohinder Singh

....Appellant

VERSUS

Maya Ram and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Nitin Rathee, Advocate for
Mr. Anil Rathee, Advocate for the appellant.

Mr. Varun Veer Chauhan, Advocate for
Mr. Sandeep Dhull, Advocate for respondent No.1.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant No.1-appellant against the judgment and decree dated 10.04.1991 passed by the First Appellate Court reversing the judgment and decree dated 18.11.1988 passed by the Trial Court. The Trial Court had dismissed the suit of the plaintiff-respondent No.1 while the First Appellate Court decreed the same.

2. The brief facts relevant to the present case are that the plaintiff-respondent No.1 filed a suit for permanent injunction for restraining the defendants from interfering in any way in the ownership/possession of house measuring 32 x 12 ft. shown as ABCD in the site plan annexed with the plaint. The case set up by the plaintiff-respondent No.1 was that previously one Giani Ram son of Ganga Sahai had built a *kacha* house on the site in dispute which site/plot the said Giani Ram had got from Smt. Bohati through a registered gift deed dated 04.01.1958. The *kacha* house fell down and the

plaintiff-respondent No.1 came to own and possess the site in question with the consent and concurrence of Giani Ram and constructed a *pacca* house in 1973. It was further averred that the defendants in collusion with each other had created a fictitious sale deed dated 12.07.1974. The defendants filed their written statement averring therein that the plaintiff-respondent No.1 was neither the owner nor in possession of the suit property and that the same was purchased by the appellant-defendant No.1 (Mohinder Singh) from defendant No.2-respondent No.2 (Lachhi Ram son of Des Raj) through a registered sale deed dated 12.07.1984 for a consideration of Rs.16,000/-. It was also alleged that Giani Ram had no concern with the said property. Replication was filed reiterating the contents of the plaint and denying those of the written statement.

3. On the basis of pleadings of the parties the following issues were framed :

1. Whether the plaintiff is owner and in possession of the house in the suit property ? OPP
2. Whether the plaintiff has no locus standi to file the present suit ? OPD
3. Whether the plaintiff has no cause of action to file the suit ? OPD
4. Whether the suit is not maintainable in the suit ? OPD
5. Whether the suit is not properly valued ? OPD
6. Whether the defendants are entitled to special costs under Section 35A CPC ? OPD
7. Relief.

4. The Trial Court vide judgment and decree dated 18.11.1988 dismissed the suit holding that the plaintiff-respondent No.1 had failed to prove his ownership or possessory rights in the house in dispute. Aggrieved by the same, an appeal was preferred by the plaintiff-respondent No.1 which appeal was allowed by the First Appellate Court vide judgment and decree dated 10.04.1991. Hence, the present appeal has been filed by defendant No.1-appellant.

5. Learned counsel for the defendant No.1-appellant would contend that there is no evidence on the record to show that the plaintiff-respondent No.1 was owner in possession of the house in dispute. It is further the contention that the defendant No.1-appellant has a registered sale deed in his favour. It is further the contention that the Trial Court had rightly dismissed the suit and the First Appellate Court has reversed the decision though there is no evidence on the record to show that the plaintiff-respondent No.1 was owner in possession of the suit property.

6. *Per contra* learned counsel for plaintiff-respondent No.1 would contend that DW-3 Lachhman had categorically stated in his cross-examination that in the area in dispute Maya Ram had also helped in the construction. It is further the contention that DW-3 had also stated in his cross-examination that the material was given to Maya Ram by Lachhman, who used the same material in the construction of the disputed area and that he had put in his labour in constructing the disputed property.

7. I have heard learned counsel for the parties.

8. In the present case the Trial Court has dismissed the suit of the plaintiff-respondent No.1 holding that the plaintiff-respondent No.1 had failed to prove his possession as well as ownership. The First Appellate

Court also held that there was no evidence on the record that Giani Ram had surrendered the ownership of the suit property in favour of the plaintiff-respondent No.1 after the *kachha kotha*, which existed there, had fallen down. However, relying on the cross-examination of DW-3 it was held that the plaintiff-respondent No.1 was in possession of the suit property. A perusal of the evidence on the record reveals that there is no evidence on the record to show any transfer of ownership in favour of the plaintiff-respondent No.1. Further, there is no evidence on the record to show that the plaintiff-respondent No.1 was ever in possession of the suit property. No doubt DW-3 had stated that Maya Ram had put in the labour to construct the fallen down portion and that he had lived there for 04 years, however, it has nowhere been admitted that the possession on the date of filing of the suit was with the plaintiff-respondent No.1. It is trite that a plaintiff has to stand on his own feet. The plaintiff-respondent No.1 had failed to produce any evidence on the record to show that he was in possession of the suit property. The argument of learned counsel for the plaintiff-respondent No.1 that there is a registered sale deed in his favour also deserves to be rejected inasmuch as there is no evidence on the record as to how Lachhman had the authority to sell the property.

9. In view of the above, the present appeal is allowed. The judgment and decree passed by the First Appellate Court is set aside and the judgment and decree passed by the Trial Court is restored. The suit of the plaintiff-respondent No.1 stands dismissed. In view of the judgment of the Hon'ble Supreme Court in the case of **Pankajakshi (Dead) through LRs & Ors. vs. Chandrika & Ors. [AIR 2016 SC (Civil) 1091]** there would be no

requirement to frame substantial questions of law. Pending applications, if any, also stand disposed off.

01.04.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO