

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1089 of 2009 (O/M)
Date of decision : 13.8.2015

Balbir Singh

..... Appellant

Versus

Gulzari Lal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. M.P.S. Kohli, Advocate, for the appellant.

Mr. Pritam Saini, Advocate, for respondent No. 1.

Mr. H.S. Virk, Advocate, for,
Mr. N.D. Achint, Advocate, for respondents No. 2 to 5.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

This regular second appeal has been filed against the judgment and decree dated 5.9.2007, passed by the learned Civil Judge (Senior Division), Ambala, vide which the suit of the plaintiff (respondent No. 1 herein) for specific performance of the agreement of sale dated 30.10.1996, executed by Sadhu Ram (deceased) in respect of an area measuring 15'x13" including a shop, situated within the abadi of village Jandli, Tehsil and District Ambala was

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decreed and the sale deed dated 23.12.1996, executed by said Sadhu Ram in favour of respondent No. 6, namely, Balbir Singh (present appellant), was set aside. The judgment and decree was upheld by the learned Additional District Judge, Ambala, on 23.10.2008. Defendant No. 6/appellant being not satisfied with the concurrent findings of two Courts below has filed this regular second appeal before this Court.

The brief facts involved in the present case are that according to plaintiff (respondent No. 1 herein), he is a tenant in the shop situated at village Jandli on the rent of Rs. 325/- per month initially, which was later on increased to Rs. 350/- per month. In October, 1996, Sadhu Ram, predecessor-in-interest of defendants No. 1 to 5 (respondents No. 2 to 5 herein) expressed his desire to sell the suit property to the plaintiff/respondent No. 1-tenant. Agreement to sell was executed in favour of plaintiff/respondent No. 1 by Sadhu Ram. The total amount of sale consideration was Rs. 30,000/-. The plaintiff/respondent No. 1 paid Rs. 23,000/- to Sadhu Ram and the remaining amount was agreed to be paid on or before 30.3.1997. However, Sadhu Ram, vide sale deed dated 23.12.1996, sold the said land to Balbir Singh defendant No. 6/appellant for Rs. 40,000/-. Defendants No. 1 to 5, who are the successors-in-interest of Sadhu Ram, who expired in the meanwhile, denied the execution of the agreement. It was stated that defendant No. 6/appellant is a

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bonafide purchaser for consideration.

From the pleadings, following issues were framed :-

- “1. Whether the plaintiff is entitled to decree for possession by way of specific performance of the agreement to sell dated 30.10.1996 with regard to property in dispute on the grounds taken in the plaint ?
OPP
2. Whether the plaintiff was ready and willing to perform his part of the agreement ? OPP
3. Whether the plaintiff is entitled to decree for permanent injunction against the defendants on the grounds taken in the plaint ? OPP
4. Whether the plaintiff has no cause of action against the defendants ? OPD
5. Whether defendant No. 6 is a bonafide purchaser of the property in dispute and for valuable consideration. If so, its effect ? OPD
6. Whether the suit is false and frivolous and defendants are entitled to special costs ? OPD
7. Relief.”

After recording the evidence of both the parties, the suit was decreed, as stated above. The appeal against the judgment and decree was dismissed by the learned Additional District Judge, Amabala, on 23.10.2008.

I have heard learned counsel for the parties and have also carefully gone through the appeal file as well as the lower Court file.

A perusal of the lower Court file shows that the copy of the agreement was produced and proved before the lower Court by way of leading secondary evidence with the permission of the Court. The copy of the agreement is Ex.P1. The same was proved by

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examining the plaintiff/respondent No. 1, Bhupinder Singh, Deed Writer (PW3) as well as Dinesh Jain, Advocate (PW2), who had attested the copy of the agreement as notary public. Shri Kapoor Singh, attesting witness (PW4) also appeared to prove the copy of the agreement.

The contention of the learned counsel for the plaintiff is that the earlier suit of the plaintiff was dismissed as they failed to lead the evidence. However, in appeal, the case was remanded back. The agreement was produced later on. It was further argued that the agreement was not entered in the register of deed writer and the deed writer stated that it does not bear his signatures.

I am of the view that the agreement has been proved by cogent evidence. If the deed writer denies his signatures, that is only one fact. The plaintiff/respondent No. 1 was a tenant in the said shop. The attesting witness Kapoor Singh (PW4) has proved the execution of the agreement. The agreement bears the signatures of Sadhu Ram. The simple denial of the defendants will not prove anything. The sale deed in favour of defendant No. 6/appellant is subsequent in time. Therefore, the same has to be ignored. Sadhu Ram expired on 11.1.1997 i.e. before the date of execution of the sale deed.

Learned counsel for the appellant has argued that the present suit is barred under Order 2 Rule 2 of Code of Civil

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Procedure, 1908 (in short 'CPC').

The plaintiff had filed the suit for permanent injunction for staying his dis-possession, which was extended to him, vide order dated 25.1.1997. However, this suit was filed on 8.2.1997. Therefore, it amounts to splitting up of the claim.

I am of the view that the previous suit was for simple injunction as the date of sale had not arrived. However, the cause of action had arisen to the plaintiff when the sale deed dated 23.12.1996, in favour of defendant No. 6 was executed and when it came to plaintiff's notice. Therefore, he could always withdraw the suit for permanent injunction and file a comprehensive suit for possession and seek permanent injunction by way of consequential relief. A perusal of the case file shows that it is a question of fact that no question of law much less the substantial question of law is involved in the present case. There are concurrent findings of the two Courts below and there is no illegality and infirmity in the same.

The present appeal is accordingly dismissed.

(KULDIP SINGH)
JUDGE

13.8.2015
sjks