

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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*C.M. No. 13241-C of 2009 and
RSA No. 4394 of 2009 (O&M)*

Date of decision: 18.12.2015

Vijay Pal and others

....APPELLANTS

VERSUS

Prithvi Singh and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Abhinav Sood, Advocate,
for Mr. Vikram Singh, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 13241-C of 2009

Prayer in this application is for permission to place on record Annexure A-1 and for dispensing with the filing of certified copy of the same.

Prayer granted. Annexure A-1 is taken on record and filing of certified copy of the same is dispensed with.

Application stands disposed of.

RSA No. 4394 of 2009

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Narnaul dated 29.08.2006, whereby the suit preferred by the appellants-plaintiffs for declaration to the effect that they are owners in possession of the property in dispute on the basis of the sale deed dated 30.05.1972 Ex. P1, stands dismissed on the

ground that the appellants-plaintiffs have not been able to establish that the vendors of the property, which was the subject matter of the sale deed, were holding title in the said property, appeal against which preferred by the appellants-plaintiffs has been dismissed by the Additional District Judge, Narnaul on 13.05.2009.

2. It is the contention of the learned counsel for the appellants that the judgments and decree passed by the Courts below are not based on proper appreciation of the pleadings and the evidence brought on record. He contends that the factum of mutual partition of the disputed land has been admitted by the respondent No. 13-defendant No. 13, namely, Prabhu Singh as his thumb impression was present on the sale deed Ex. P1. He contends that on the basis of the mutual partition of the property in question, they had the title to the property and, therefore, the sale deed did confer a right upon the appellants-plaintiffs. His further contention is that the sale deed was duly executed and the said fact has also been proved on record and once the sale deed has been proved, the consequential benefits are required to be conferred upon the appellants-plaintiffs. He asserts that the dismissal of suit on the ground of limitation also cannot be sustained as the appellants-plaintiffs are claiming their title over the suit property and for a suit for title, there is no limitation.

3. I have considered the submissions made by the learned counsel for the appellants and with his able assistance, have gone through the impugned judgments but do not find any illegality in the same which would call for any interference by this Court.

4. The basic question, which has rightly been posed by the Courts, was whether on the basis of the sale deed dated 30.05.1972 Ex. P1,

any right was conferred upon the appellants-plaintiffs. For the purpose of coming to such a conclusion, it was mandatory that the vendors should have a title in the suit property, which was subject matter of the sale deed. The appellants-plaintiffs have failed to prove the same except for asserting that there was a mutual partition between the brothers. Had such a mutual partition taken place, the same should have been reflected in the revenue records but none of the revenue records, which have been produced, depicted the same. The finding, thus, recorded by the Courts below that the vendors of the appellants-plaintiffs did not have title in the suit property, cannot be faulted with.

5. As regards the contention of the learned counsel for the appellants that the suit is in the form of a title suit and, therefore, there was no limitation, the said contention also cannot be accepted as the sale deed was registered on 30.05.1972 and the present suit has been filed on 10.09.1995 i.e. after an expiry of about 23 years. Had the said sale deed been mutated, the revenue records would have depicted the same. Because of non-incorporation of the sale deed Ex. P1, the same cannot be made the basis to treat it as a suit for title. In any case, on merits, the claim of the appellants-plaintiffs, on the basis of the sale deed 30.05.1972 Ex. P1, has been rejected and, therefore, there is no illegality in the judgments and decree passed by the Courts below which would call for any interference by this Court.

6. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

7. In view of the above, finding no merit in the present appeal, the same stands dismissed.

December 18, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE