

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

102

*C.M. Nos. 9020-21-C of 2011 and
RSA No. 3266 of 2011*

Date of decision: 20.11.2015

Sukhbir son of Malkhan

....APPELLANT

VERSUS

Hemant Kumar and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vishwajeet Singh, Advocate,
for Mr. Keshav Pratap Singh, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 9020-C of 2011

Prayer in this application is for exemption from filing certified copy of judgment and decree dated 17.03.2008 passed by the Civil Judge (Junior Division), Siwani-Camp-at Bhiwani.

Prayer granted. Filing of certified copy of judgment and decree dated 17.03.2008 passed by the Civil Judge (Junior Division), Siwani-Camp-at Bhiwani is dispensed with.

Application stands disposed of.

RSA No. 3266 of 2011

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Siwani-Camp-at Bhiwani dated

17.03.2008, by which the suit filed by the respondents-plaintiffs stands decreed whereby an injunction was prayed for restraining the appellant-defendants from interfering in the peaceful ownership and possession of the plot shown in the site plan and detailed in the head note of the plaint and further the appeal preferred by the appellant-defendant stands dismissed by the Additional District Judge-IV, Bhiwani dated 10.05.2011.

2. It is the contention of the learned counsel for the appellant that the Courts below have not appreciated the fact that the sale deed dated 09.06.1976 registered in favour of the respondents-plaintiffs, which was executed by Ram Kumar-defendant No. 1 in the suit, was not a valid sale deed as he was not the owner of the property and, therefore, could not transfer the title with regard to the ownership of the said plot. He further asserts that the sale deed was a result of fraud and, therefore, would not, in any case, confer any right or title upon the respondents-plaintiffs. He, thus, contends that the judgments passed by the Courts below holding the respondents-plaintiffs owner-in-possession of the property cannot sustain and deserve to be set aside.

3. This contention of the learned counsel for the appellant cannot be accepted as it is not in dispute that as per the statement made by Radhey-DW1, in his cross-examination and that too, on the basis of the site plan Ex. DW5/B, the boundaries of the property as owned by the appellant-defendant as per the site plan Ex. DW5/B did not tally and are different from the head note of the plaint shown in the site plan Ex. P2, which is of the respondents-plaintiffs. If that be so, the suit property, on which the respondents-plaintiffs is claiming ownership, is different from what is being owned and possessed by the appellant-defendant. If that be so, the appellant-defendant

is not concerned with the property which is a subject matter of dispute in the suit, which has been filed by the respondents-plaintiffs. The findings, thus, recorded by the Courts below cannot be said to be without any basis or on non-consideration of the pleadings and the evidence brought on record.

4. 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.

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

C.M. No. 9021-C of 2011

In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

November 20, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE