

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No. 3491 of 2013

Date of decision:- February 04, 2015

Ami Lal

.....Appellant..

Vs.

Shyam Lal

....Respondent..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Jatin Hans, Advocate
for the appellant.

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

JASPAL SINGH, J.

Unsuccessful appellant-plaintiff has preferred instant appeal feeling dissatisfied against judgment and decree dated May 01, 2013 passed by Id. Additional District Judge, Bhiwani in Civil Appeal No. 159/2011 while confirming judgment and decree dated August 23, 2011 passed in Civil Suit No. 393 of 2006/2008 by Additional Civil Judge, (Senior Division) Bhiwani whereby suit preferred by appellant-plaintiff "for declaration to the effect that he is owner in possession of 2/3rd share of house bearing M.C. Unit No. Ami Lal versus Shyam Lal Y-1984 shown in red colour with letters ABCD in site plan bounded as under:-

East : Gali
West : House of Krishan Kumar son of Dharampal
North: Gali Share-aam
South: House of Krishan Dalal

situated in Chiranjeev Colony, B.T.M. Road, Bhiwani (hereinafter referred to as suit property for brevity). Plaintiff is also entitled to incorporate entry in the Municipal-Record to this effect. Plaintiff has also sought relief of permanent injunction restraining the defendant to alienate, mortgage, transfer the suit property to any one else or to raise loan and to interfere in the possession of the plaintiff over the house in question” was dismissed with no order as to costs.

2. Case of appellant-plaintiff in brief is that previously property in suit was owned by Udmi Ram, father of parties to the suit. After demise of Udmi Ram, it devolved upon Ami Lal, Sham Lal and Mangat Ram to the extent of $\frac{1}{3}^{\text{rd}}$ share each. Vijay Kumar, other brother of parties was already taken in adoption during his childhood by Phool Singh, son of Bhodu Ram. About 08 months prior to institution of suit before trial court, parties to the suit exchanged their $\frac{1}{3}^{\text{rd}}$ shares in the house in dispute situated at Bhiwani with house situated at Fatehpuri, Tappa Dahina, Tehsil and District Rewari. As per said exchange, appellant-plaintiff became owner in possession of $\frac{2}{3}^{\text{rd}}$ share of house situated at Bhiwani whereas defendant became owner of $\frac{2}{3}^{\text{rd}}$ share of house situated at village Fatehpuri, Tappa Dahina, Tehsil and District Rewari.

3. On the other hand, defendant's case is that no exchange

ever took place in respect of the property in dispute with plaintiff and he is still owner in possession of 1/3rd share in suit property. Neither plaintiff has got any *locus standi* to file suit nor same is maintainable in present form and further that plaintiff has filed suit with a *mala fide* intention to grab the share of defendant.

4. From the pleadings of parties, following issues were framed by Id. trial court for adjudication of matter:-

- “1. *Whether the plaintiff is owner of the suit property to the extent of 2/3rd share and is entitled to be incorporated his name in the municipal Record accordingly on the ground as alleged in the plaint?*
OPP
2. *Whether the plaintiff has no locus standi nor any cause of action to file the present suit.? OPD*
3. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
4. *Relief.”*

5. Both the parties were afforded ample opportunities to conclude and adduce their evidence in respect of their respective pleadings and they led oral as well as documentary evidence.

6. After hearing learned counsel for parties and analyzing evidence available on file, issue No. 1 was decided against appellant-plaintiff whereas issues No. 2 and 3, onus of which was on defendant, were decided in his favour. Resultantly, suit of appellant-plaintiff was dismissed vide judgment and decree dated August 23, 2011.

7. Aggrieved against judgment and decree passed by trial court, appellant-plaintiff preferred an appeal before Id. Additional

District Judge and that appeal was also dismissed vide judgment and decree dated May 01, 2013 whereby judgment and decree of trial court dated August 23, 2011 was upheld.

8. Still aggrieved against judgments and decrees passed by both the courts below, appellant-plaintiff has come up with this appeal.

9. While assailing impugned judgments and decrees as well as findings recorded by both the courts below especially on issue No.1, it has been argued with vehemence by learned counsel for appellant that suit of appellant-plaintiff has been wrongly, arbitrarily and illegally dismissed by both the courts below. Moreover, both the courts below have mis-appreciated the evidence, which has resulted into a great prejudice to appellant-plaintiff. Appellant-plaintiff has claimed ownership of property in suit to the extent of 2/3rd share on the basis of an oral exchange which though was reduced in writing, copy of which is Mark 'A' dated March 09, 1991. Ld. trial Court has ignored and discarded this writing despite the fact that Sham Lal-defendant-respondent, during his examination as a witness has categorically admitted his signatures on Mark 'A' at point Mark "B" and "C". Once signatures on document had been admitted by respondent-defendant, onus shifts upon him to prove that same is result of fraud and misrepresentation or as to how and under what circumstances, his signatures have appeared on Mark 'A' but despite all this legal and factual position, Id. lower appellate court has dismissed the appeal. Moreover, it is not a case of respondent-

defendant that his signatures have been obtained on blank paper. So, on this score alone, judgment passed by Id. trial court and affirmed by Id. Additional Sessions Judge vide judgment and decree dated May 01, 2013 are not sustainable in the eyes of law and deserve to be set aside.

10. While concluding his arguments, it has been submitted by learned counsel for appellant that mis-appreciation of evidence as well as settled principles of law with regard to admissibility of Mark 'A', are substantial questions involved in this appeal, which are sufficient for admission of appeal.

11. Having heard, learned counsel for appellant and analyzing impugned judgments and decrees of both the courts below, this Court does not find any infirmity or illegality either in the findings recorded by lower courts on all issues as well as impugned judgments and decrees.

12. During the course of arguments, much stress has been laid by learned counsel for appellant that document Mark "A" has been wrongly ignored and disbelieved by Id. trial court but in fact, document Mark 'A' cannot be taken into consideration and has rightly been done so by Id. trial court, it being a copy stray writing. There is nothing on record to suggest as to where is the original of Mark 'A'. Appellant had approached Civil Court for redressal of his grievances and he has to stand on his own legs. He cannot take any advantage from the weakness of respondent-defendant. No effort has been made by appellant-plaintiff before Id. trial court either to make

available original of Mark 'A' or to prove the same by way of secondary evidence under the provisions of Indian Evidence Act. Moreover, testimony of appellant-plaintiff is not reliable and has rightly been discarded in this regard. Claim set up in plaint by appellant-plaintiff is that just 8 months prior to institution of suit, an oral exchange took place between the parties whereas a glance at document Mark 'A' reveals that oral exchange has allegedly taken place on March 09, 1991. Even otherwise, document Mark 'A' has not seen the light of the day prior to the filing of suit. It was never brought to the notice of either revenue authorities for getting it incorporated in the revenue record nor to the officials of municipal committee for effecting change of ownership in its record or House Tax Assessment Register.

13. On the other hand, defendant -respondent has placed on record copy of House Tax Assessment Register Ex.D-1 pertaining to year 1999-2000. A perusal of which clearly depicts that defendant-Sham Lal is owner to the extent of 1/3rd share. In such circumstances, it can be said without any hesitation that findings recorded by both the courts below are absolutely inconsonance with evidence available on file and suit preferred by appellant-plaintiff before trial court has rightly been dismissed. Similarly, dismissal of appeal preferred by appellant-plaintiff while confirming judgment and decree dated August 23, 2011, rendered by trial court is also legally and factually justified.

14. As an upshot of the aforesaid discussion, this Court is of

the considered view that neither there is any mis-appreciation of evidence nor that of legal proposition. Rather it can be said that no question of law is involved what to say of any substantial question of law requiring admission of appeal. Accordingly, appeal stands dismissed.

15. No order as to costs.

(JASPAL SINGH)
JUDGE

February 04, 2015
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