

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.1338 of 2015 (O & M)

Date of Decision: December 05, 2015

Lal Chand

..... APPELLANT

VERSUS

Surjit Kaur @ Rani & another

..... RESPONDENTS

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CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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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?

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PRESENT: - Mr. Sarju Puri, Advocate, for the appellant.

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Jaspal Singh, J

1. The instant appeal has been preferred by plaintiff – Lal Chand, challenging judgment and decree dated February 28, 2013 passed by the trial court as well as judgment & decree dated January 12, 2015 by passed by the lower appellate court whereby the findings recorded by the trial court have been upheld and appeal filed by the plaintiff against the judgment & decree passed by the trial court has been dismissed. Accordingly, the suit filed by plaintiff for declaration, possession, permanent injunction as well as mandatory injunction, as fully detailed in the plaint, has been dismissed.

2. While assailing the findings returned by the trial court on all the issues and affirmed by the lower appellate court, it has been ebulliently argued by learned counsel for the appellants that same are against the evidence available on file and settled canons of law. Mis-appreciation of evidence adduced by the plaintiff has resulted into mis-carriage of justice. Infact, it is amply proved on record that after purchase of land for a valuable consideration from Joga Singh and Surjit Kaur, plaintiff raised a construction over the property in dispute and started residing therein. He is a bonafide purchaser for value and without notice of any adverse title with regard to ownership. Even he has also installed electric connection, telephone connection and water connection in the disputed property. The appellant – plaintiff was not aware about the previous litigation in between aforesaid Joga Singh and Surjit Kaur or with any other person. Moreover, Surjit Kaur has categorically undertaken and assured the appellant – plaintiff that as and when she succeeds to the estate of her brother Bikkar Singh, she will compensate him and transfer her share in favour of the appellant – plaintiff in lieu of the land subject matter of sale deed dated March 21, 1986. Since mutation No.2204 has already been sanctioned in favour of defendants in respect of property, owned and possessed by Bikkar Singh, Surjit Kaur refused to transfer the property as agreed to by her. Thus, the appellant – plaintiff has an legal right to claim the property from Surjit Kaur, who otherwise, is legally bound to transfer another piece of land from some khewat after death of her brother Bikkar Singh. Since, both the courts below have failed to appreciate the various contentions put-forth by the appellant – plaintiff, the impugned judgments & decrees are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of the instant

3. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellant but finds the same to be without any factual or legal substance.

4. It is an undisputed fact that earlier a litigation was pending between Surjit Kaur, defendant – respondent No.1 and Joga Singh. Previously, a suit for specific performance was filed which was decreed vide judgment & decree dated July 19, 1985. Subsequent thereto, in execution proceedings, sale deed Ex.D1 has been got executed by the executing court in favour of Gian Mittar on the basis of decree for specific performance, referred to above. Aforesaid judgment dated July 19, 1985 has become final and conclusive. Moreover, through instant suit, the plaintiff – appellant has sought that defendant No.1 should sell an alternate piece of land to him which has delved upon her after the demise of her brother Bikkar Singh but it is whorth-while to note that there is nothing on the record to suggest that any property has been inherited by Surjit Kaur from Bikkar Singh. Even from the pleadings, it is not clear that Bikkar Singh was brother of Surjit Kaur or was his father. Moreover, there is no definite and specific evidence led by the plaintiff that he came to know about the cancellation of mutation in respect of 1 kanal 0 marla on the basis of sale deed Ex.P1 after the lapse of more than three decades. The suit has been filed by him in the year 2006 whereas sale deed pertains to the year 1986. Moreover, there is also nothing on record to suggest that at the time of execution of sale deed dated March 21, 1986, possession of the property, subject matter of the aforesaid sale deed, was delivered to the appellant – plaintiff. Since, there is no evidence to prove the plea taken by the appellant – plaintiff, the suit as well as appeal preferred by him have been rightly dismissed by the courts below.

5. In the light of what has been discussed above, there is no infirmity, illegality and impropriety in the findings returned by the courts below. Consequently, impugned judgments & decrees passed by both the courts are upheld. Accordingly, the appeal is dismissed. However, the parties are left to bear their own costs.

December 05, 2015
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(Jaspal Singh)
Judge