

In the High Court of Punjab and Haryana at Chandigarh

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CM No.5659-C of 2015
and
R.S.A. No.2163 of 2015 (O&M)

.....

Date of decision:15.7.2015

Kulwinder Singh

.....Appellant

v.

Ajaib Singh and another

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Jashandeep Singh Sandhu, Advocate for the appellant.

.....

Inderjit Singh, J.

CM No.5659-C of 2015:

For the reasons mentioned in the civil miscellaneous application, the delay of 77 days in filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

R.S.A. No.2163 of 2015 (O&M):

This regular second appeal has been filed by Kulwinder Singh-appellant/plaintiff against Ajaib Singh and Gurnaib Singh-respondents/defendants challenging the impugned judgment and decree dated 15.11.2014 passed by the learned Additional District Judge, Bathinda, vide which the appeal filed by the appellant-plaintiff against the impugned judgment and decree dated 14.10.2013 passed by Additional Civil Judge

(Senior Division), Phul, dismissing the suit of the plaintiff, has been dismissed.

The brief facts of the case are that Kulwinder Singh-plaintiff filed a suit against Ajaib Singh and Gurnaib Singh-defendants for declaration that he is owner in possession of land measuring 2 Kanals as mentioned in the head note of the plaint and the defendants have no right or concern with it. It is also the case of the plaintiff that the entries in the revenue record are wrong and the plaintiff is entitled to get the same corrected and further suit for permanent injunction restraining the defendants from alienating or disposing of the suit property in any manner.

The case of the plaintiff is that the defendants are owners in possession of 16 Kanals as per Jamabandi 2004-05 in the area of Village Jalal. In July 2007, the defendants agreed/proposed to sell land measuring 2 Kanals out of the land under their ownership to the plaintiff for a sum of ₹87,500/- and for the execution of the registered sale deed the defendants came to the office of Sub Registrar along with one Gurcharan Singh Namberdar. The defendants purchased the stamp papers of ₹5,250/-. The sale deed was scribed and defendant Ajaib Singh thumb marked the same, while defendant Gurnaib Singh signed it in Punjabi. It was also duly witnessed by Gurcharan Singh Namberdar and the plaintiff signed the same as purchaser. The second witness on that day did not come present and further it was agreed between the parties that they would come again and then second witness will be brought. The defendants adopted delaying tactics and did not execute the registered sale deed and told to the plaintiff

that they would inform him when they would desire to execute the sale deed. On 19.9.2007, suddenly the defendants came to the plaintiff and told him that they are ready to execute the sale deed in his favour. The plaintiff reached the office of Sub Registrar at 3.30 p.m., where the defendants took him to the Sub Registrar directly along with the witnesses Gurcharan Singh Namberdar and Uggar Singh Namberdar on the ground that Sub Registrar has to go away, they should get the sale deed registered quickly. The plaintiff appeared before the Sub Registrar along with the defendants and witnesses and executed the sale deed No.3014 dated 19.9.2007 hurriedly in favour of the plaintiff. The plaintiff further pleaded that in order to commit fraud with him, the defendants changed the area and dimensions of the property from 2 Kanals as mentioned in the sale deed dated 20.7.2007 to 1 Kanal. There is note under the sale deed and under that note the date 20.7.2007 has been written and that cutting, which pertains to changing of the land from 2 Kanals to 1 Kanal, has been typed over the signatures of the plaintiff. No signatures of the plaintiff have been taken below the writing because on 20.7.2007, there was no such cutting, which itself shows that the defendants in order to cause loss to him, in connivance with scribe, have changed the measurement of land from 2 Kanals to 1 Kanal.

On the other hand, the case of defendant No.2 is that the defendants entered into an agreement with the plaintiff for the land measuring 2 Kanals for a consideration of ₹87,500/- and sale deed had been registered in favour of the plaintiff on the same date. Further, the defendants purchased the stamp papers on 20.7.2007 in the name of the

plaintiff. It has further been stated that on 20.7.2007 both the witnesses were present, but the defendants did not take the sale deed with them. The plaintiff himself was not interested in early registration of the sale deed. The defendants immediately went with the plaintiff and the witnesses were informed and the land was sold as agreed. No cuttings have been made in the sale deed. The plaintiff has got constructed a house in the land purchased by him. The allegations regarding cuttings in the sale deed are wrong and hence denied. The plaintiff himself got the cuttings in the sale deed made from the Deed Writer basically on the ground otherwise that he will have to pay for more stamp duty, which he has to purchase.

After framing of the issues and after the parties produced the evidence, the learned Additional Civil Judge (Senior Division), Phul, dismissed the suit of the plaintiff. An appeal was filed, which was also dismissed by the learned Additional District Judge, Bathinda.

At the time of arguments, learned counsel for the appellant argued that the plaintiff is owner in possession of 2 Kanals of land and the sale deed regarding one Kanal is got executed by playing fraud upon the plaintiff by the defendants.

The learned Additional Civil Judge (Senior Division), Phul, while appreciating the evidence discussed the cross-examination of PW-1-plaintiff, who admitted that he can read Punjabi and he puts his signatures in Punjabi. He admitted that on 19.7.2007, he did not tell the Tehsildar regarding the cutting in the sale deed. He volunteered that sale deed was not shown to him. He also admitted his signatures under the lines from

Mark-A to Mark-B on the sale deed. He denied that these lines were not written on 20.7.2007. He also admitted that no complaint was filed by him to DSP and SSP regarding cuttings on the sale deed. No complaint was filed by him against Major Singh, scribe. PW-2 Uggar Singh Namberdar in cross-examination denied that the note at Mark-A to Mark-B was written in his presence. He did not read the registered document, but just put his signatures. He did not tell Tehsildar to take action for cutting in the sale deed. He also stated that sale deed was not read over to him. PW-3 Surjan Singh also supported the case. Surjan Singh in cross-examination also stated that he was not present at the time of registration of the sale deed. Defendant has simply filed copy of the sale deed dated 20.7.2007 Ex.D.1 and Jamabandi for the year 2004-05 Ex.D.2. As per registered document Ex.P.1, the land measuring 1 Kanal has been sold by the defendants to the plaintiff. The document is registered one and regarding the cutting there is specific note in the sale deed. As per observation of the learned Additional Civil Judge (Senior Division), the signatures of plaintiff-Kulwinder Singh are below the note from Mark-A to Mark-B, which certify the cuttings in the sale deed. The date on the note is 20.7.2007 which shows that the same has not been made on 19.7.2007. It is also observed by the learned Additional Civil Judge (Senior Division) that the signatures of Gurnaib Singh and Ajaib Singh-defendants are below the note and secondly the signatures of Kulwinder Singh are on two places, one above this note and the other under the note. The lower Court while appreciating the evidence on record in right perspective dismissed the suit of the plaintiff. The sale deed has been

registered on 19.7.2007 and the suit has been filed on 4.1.2010. The document was of 19.7.2007 and the plaintiff did not file suit for so many years. Therefore, the findings given by the Courts below are correct and as per law. Even if defendant No.2 admitted the fact that sale deed was for 2 Kanals in the written statement, this admission is to be seen as per the registered document. More over, the suit of the plaintiff against defendant No.1 has been dismissed, under Order 9 Rule 2 C.P.C. The vague pleadings of defendant No.2 cannot prove the case of the plaintiff.

In the appeal, the learned Additional District Judge, Bhatinda, also correctly appreciating the evidence has dismissed the appeal. The findings given by the Courts below are concurrent, as per evidence on record and law. Nothing has been pointed out as to which evidence has been misread by the courts below and which evidence has not been discussed in right perspective. The findings cannot be held as perverse. Both the judgments and decrees passed by the Courts below are correct, as per evidence and law which do not require any interference from this Court and the same are upheld. No substantial question of law arises in this regular second appeal.

Therefore, finding no merit in the regular second appeal, the same is dismissed.

July 15, 2015.

(Inderjit Singh)
Judge

hsp