

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2295 of 2015 (O&M)
Date of Decision: May 25, 2015

Nahar Singh

...Appellant

Versus

Suraj Kant and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.K.S.Brar and Mr.A.P.Kaushal, Advocates
 for the appellant.

INDERJIT SINGH, J.

Appellant-plaintiff Nahar Singh has filed this regular second appeal against Suraj Kant and Vinod Kumar Dutt respondents-defendants challenging the impugned judgment and decree dated 07.12.2011 passed by learned Civil Judge (Junior Division) Khanna vide which the suit filed by the plaintiff for specific performance of agreement to exchange was dismissed and also the judgment and decree dated 20.02.2015 passed by learned District Judge, Ludhiana vide which the appeal filed by the appellant-plaintiff was also dismissed.

The brief facts of the case are that plaintiff-appellant Nahar Singh filed a suit against Suraj Kant and Vinod Kumar Dutt for specific performance of agreement to exchange dated 01.07.2002 regarding exchange of the immovable property measuring 9-1/3 marla i.e. 1/3rd

share of 1 kanal 8 marla as fully described in the headnote of the plaint. It is stated in the plaint that plaintiff and defendants entered into an agreement dated 01.07.2002 to exchange the property as detailed in the headnote of the plaint. It was settled that the defendants would get the land mutated in the revenue record within one month. It is further stated that plaintiff and defendants have already exchanged possession of the lands subject matter of the agreement to exchange. It is also stated that the mutation of the above-said exchange cannot be effected without first execution and registration of the exchange deed. The plaintiff requested the defendants to perform their part of the agreement to exchange but to no avail. It is also stated that plaintiff has always been ready and willing to perform his agreement to exchange dated 01.07.2002.

On the other hand, the case of the defendants is that the alleged agreement to exchange is vague, uncertain, which cannot be enforced under law. The defendants also stated that the alleged agreement to exchange is illegal, null and void and without consideration. The plaintiff is not the owner of any such property. The defendants never agreed to exchange the property with the plaintiff. The defendants purchased the land measuring 9-1/3 marla for a sale consideration of ₹24,000/- from the plaintiff vide registered sale deed dated 09.03.1994. Since then, the defendants are exclusive owners of this property. It is further stated that plaintiff sold the land measuring 5 kanal in the form of two plots to M/s Hygenic Foods. The plaintiff is no more owner of this property.

The plaintiff examined himself as PW-1 and further examined Navdeep Gupta, Handwriting and Fingerprint Expert as PW-2. On the other hand, defendant Vinod Kumar examined himself as DW-1.

Learned Civil Judge (Junior Division) Khanna, after appreciating the evidence, dismissed the suit of the plaintiff vide judgment and decree dated 07.12.2011. An appeal was filed by the plaintiff before learned District Judge, Ludhiana and the appeal was dismissed by learned District Judge, Ludhiana vide judgment and decree dated 20.02.2015.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellant-plaintiff.

At the time of arguments, learned counsel for the appellant argued as per the case of the plaintiff and stated that findings of the Courts below are incorrect and not as per law and evidence on record.

After hearing learned counsel for the appellant and after going through the record, I find that the findings given by both the Courts below are concurrent and as per law. Both the Courts have appreciated the evidence in right perspective. There is nothing on the record to show that any evidence has been misread. No substantial question of law arises in this regular second appeal. Both the Courts below after considering the evidence, reached to the conclusion that value of the land is more than ₹100/- and the document agreement to exchange Ex.P1 is unregistered document. The Courts further reached to the conclusion that there is no agreement for securing

exchange deed in future. The perusal of document Ex.P1 agreement to exchange shows that possession of respective lands has been delivered and it amounts to exchange deed and in no way, it can be held as memorandum of exchange. Therefore, as per this document Ex.P1, even if it is taken that the properties were exchanged, even then this document is an exchange deed and its registration is necessary as per law. As this document is unregistered, therefore, no relief can be granted on the basis of this document. Secondly, though it is written as agreement but the contents of Ex.P1 show that this is in fact unregistered exchange deed. There are no terms and conditions in this agreement Ex.P1 to execute the exchange deed in future or registering the same. The only condition is that both the parties will get the mutation entered and sanctioned on the basis of this document within one month.

Keeping in view these facts, the Courts below have correctly appreciated the evidence. The plaintiff is not entitled to specific performance on the basis of document Ex.P1. Rather, contents of this document show that it is an exchange deed not agreement.

In view of the above discussion, I find that the Courts below after correctly appreciating the evidence in right perspective, have passed the judgments and decrees as per law, which do not require any interference from this Court and the same are upheld. Moreover, no substantial question of law arises in the present regular second appeal.

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

May 25, 2015
Vgulati

(INDERJIT SINGH)
JUDGE