

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.3018 of 2015 (O & M)

Date of Decision: *October 01, 2015*

Suraj Mal & another

..... APPELLANTS

VERSUS

Sunita & another

..... RESPONDENTS

...

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. Saurabh Dalal, Advocate, for the appellants.

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Jaspal Singh, J

CM Nos.7213 & 7214 C of 2015

For reasons mentioned in the applications, delay in re-filing and filing the appeal is condoned.

Applications stand allowed.

RSA No.3018 of 2015

1. The instant appeal has been preferred by defendants – Suraj Mal & another challenging judgment and decree dated March 08, 2011 by passed by the trial court as well as judgment & decree dated April 24, 2013 passed by the lower appellate court, whereby the findings recorded by the trial court have been upheld and appeal filed by the defendants against the

judgment & decree passed by the trial court has been dismissed. Accordingly, the suit filed by plaintiff for permanent injunction restraining the defendants from interfering into her peaceful possession over the suit land in any manner, has been decreed.

2. While assailing the impugned judgments & decrees passed by both the courts below, it has been ebulliently argued by learned counsel for the appellants that the same are absolutely against the evidence available on record and settled canons of law. Mis-appreciation of the legal proposition has resulted into mis-carriage of justice. Plaintiff and defendants are cousins. Jaipal – brother of plaintiff sold his ancestral property situated in village Kharkhara in the year 2001 and purchased one Garha Khad/plot from Mehu and Polhu in village Bainsi, Tehsil Meham, District Rohtak. Jaipal constructed a shop on the plot and started the business of welding, and get settled in village Bainsi. After the death of Jaipal on May 30, 2005, plaintiff being the sole legal heir of deceased Jaipal became owner in possession of the suit land as her brother was unmarried. A dispute arose between the parties regarding ownership of the suit property in the year 2005. Learned counsel has contended that infact, property in question was purchased by the defendants from one Satyawan (DW-3) in the year 1994 and a part thereof from Mange Ram, father of Nathia (DW-1) in the year 1996. They constructed shops wherein Jaipal was working as he was the cousin of defendants. Defendants were not allowed to exhibit their documents like investigation report of DSP, affidavit or other documents regarding purchasing of land. The courts below have not appreciated the evidence on file, thus, suit of the plaintiff is not sustainable in the eyes of law and impugned judgments & decrees are liable to be set aside by way of acceptance of the instant appeal.

3. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellants and perused the record.

4. Though, the defendants have denied the purchase of property by Jaipal and sale of ancestral property at village Kharkhara but during the course of evidence, it has been admitted by them that Jaipal sold his ancestral property at Kharkhara. Defendants were also specifically asked whether the suit land was purchased by Mehu and Polhu but they did not deny it. However, they took up the plea that they had expired 50 years back. However, no evidence was led in that regard. On the other hand, plaintiff proved her possession over the suit property in her own testimony while appearing in the witness box as PW-3, besides the testimonies of Puran PW-1 and Hawa Singh PW-2. Moreover, plaintiff placed on record the decision of Panchayat Ex.PX, proved by Puran PW-1 who was the member of Panchayat and one of the executants of that document. Perusal of Ex.PX reveals that a Panchayat was convened wherein Panchayat has admitted the ownership as well as possession of Jaipal as well as that of the plaintiff after his death. The learned counsel for defendants further contends that it is a common matter in the villages that land in the shape of Garha Khad are sold on the basis of brotherhood by accepting the amount and delivering the possession, and generally, no sale deed is executed in this regard. In the instant case, admittedly, no sale deed was executed in favour of deceased Jaipal but his possession over the suit land and raising of construction over the property stand duly established.

5. As regards the plea taken by the defendants that they had purchased the suit property from Mange and Satyawar. Mange has not been

appeared in the witness box as DW-1 but her statement is not sufficient to prove that her son Mange sold the property to defendants. There is absolutely no evidence on the record showing that Mange and Satyawar were owners of the property in question. However, on the other hand, it is established on record on the basis of Ex.PX that Jaipal was owner as well as in possession of the suit land and after his death, plaintiff became owner in possession of the suit property.

6. Moreover, filing and withdrawal of an earlier suit by the defendants has been admitted by them. Withdrawal of that suit proves that plaintiff was having possession over the suit land and defendant Suraj Mal filed litigation seeking ownership/possession and when his ownership and possession were not believed by the court, he withdrew the suit. Even in the present case, preponderance and probability of evidence clearly prescribes that Jaipal had purchased the suit land from the vendors which was in the shape of Garha Khad and he raised construction of shop(s) and house over it from the amount received by him after selling his ancestral property at village Kharkhara.

7. No other question of law, much less, substantial question of law has been raised.

8. In the light of what has been discussed above, this Court is of the considered view that judgments & decrees rendered by both the courts below are absolutely in consonance with the evidence available on file as well as legal proposition. The instant appeal being devoid of merits is dismissed. However, parties are left to bear their own costs.

October 01, 2015
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(Jaspal Singh)
Judge