

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.367 of 2015 (O & M)

Date of Decision: *January 30, 2015*

Karnail Singh

..... APPELLANT

VERSUS

Amarjit Singh & another

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

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. A.S. Jattana, Advocate, for the appellant.

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Jaspal Singh, J

CM No.1046-C of 2015

For reasons recorded in the application, which is duly supported by an affidavit of the appellant, delay of 126 days in filing the appeal is condoned.

RSA No.367 of 2015 (O & M)

1. Having remained unsuccessful before both the courts below, appellant has preferred the instant appeal being dissatisfied against judgment and decree dated May 29, 2014 passed by the Additional District Judge, Barnala whereby an appeal preferred by

the appellant – plaintiff was dismissed confirming judgment and decree dated September 17, 2013 passed by the trial court in Civil Suit No.508 dated January 17, 2007 vide which the suit for possession by way of mandatory injunction of land measuring 0 kanal 9 marla situated in village Khuddi Kalan, District Barnala, after removal of construction and electric connection as well as for permanent injunction restraining defendant No.1 from alienating the suit property or raising any further construction and from changing nature thereof in any manner, was dismissed.

2. Brief facts of the case are that the appellant – plaintiff preferred a suit seeking possession by way of mandatory injunction of *Gair Mumkin Abadi* measuring 0 kanal 9 marla, fully detailed and described in the head note of the plaint, from defendant No.1, claiming himself to be owner of the property in suit and alleging that the same is in possession of respondent – defendant No.1 as licensee.

3. The suit was contested by defendant No.1 who filed written statement raising preliminary objections that suit is not maintainable in the present form; suit is not properly stamped; and that suit is barred by time. On merits, defendant – respondent No.1 denied the ownership of plaintiff and claimed that the suit property was sold by Sampuran Singh, grandfather of plaintiff to Sadhu Singh, maternal uncle of defendant No.1, vide sale deed dated December 20, 1963. After purchase of property, Sadhu Singh raised

construction and got an electric connection released in his name. He had been residing with his wife in the suit property. Subsequently, Sadhu Singh executed a registered Will bequeathing the property in dispute as well as other movable and immovable property in favour of defendant – respondent No.1. Consequently, suit of the appellant – plaintiff was dismissed in toto. Appeal preferred by the appellant – plaintiff before the first appellate court was also met with the same fate vide judgment and decree dated May 29, 2014.

4. Feeling aggrieved, Karnail Singh, appellant – plaintiff preferred the instant appeal.

5. Learned counsel for the appellant while assailing the judgment and decrees passed by the courts below has argued with vehemence that mis-appreciation of the oral as well as documentary evidence and legal proposition applicable to the facts and circumstances of the case has resulted into miscarriage of justice. It is an admitted fact that Karnail Singh has been recorded to be owner of the property in suit as per jamabandi pertaining to the Year 2002-03, Ex.P-1. The presumption of truth is attached to the entries appearing in the copy of jamabandi under Section 44 of the Punjab Lands Revenue Act, 1887. Moreover, there is no evidence adduced by the defendants – respondents to rebut the said presumption.

6. Sampuran Singh did not sell or agreed to sell the property in dispute to Sadhu Singh, rather, Sadhu Singh came in its permissive possession as a licensee. He was not competent to

execute any Will in favour of Amarjit Singh. Alleged Will Ex.D1 and the agreement of sale Ex.D2 are forged and fabricated documents. Since both the courts below have misinterpreted, misconstrued and misappreciated oral as well as documentary evidence i.e. jamabandi Ex.P1, Will Ex.D1 and agreement of sale Ex.D2, indulgence of this Court is required to protect the rights of the appellant. Thus, the judgments and decrees rendered by the courts below are not sustainable in the eyes of law and deserve to be set aside.

7. This court has given an anxious consideration to the aforesaid submissions made by learned counsel for the appellant and meticulously scanned both the judgments and decrees under challenge.

8. Admittedly, copy of jamabandi Ex.P-1 reveals the ownership of Karnail Singh but presumption attached to the entries in the jamabandi is rebuttable. In the case in hand, entries appearing in jamabandi Ex.P-1 stands rebutted by way of cogent and convincing evidence adduced by the respondents – defendants. Infact, appellant cannot be said to have approached the court with clean hands. It is an admitted fact that Sampuran Singh, grandfather of appellant – plaintiff, Karnail Singh, was owner of the property in dispute. He sold away the same vide sale deed dated December 20, 1963 and delivered the possession thereof to Sadhu Singh.

Subsequent thereto, Sadhu Singh raised construction of a house and got released an electric connection in his name. This fact has not been denied by the appellant – plaintiff. The ownership and possession over the property in suit was not challenged by Sampuran Singh during his life time. It was only at a subsequent stage, appellant came forward and filed suit for possession alleging the defendants – respondents to be licensee over the property in dispute.

9. Sale deed dated December 20, 1963 is fully proved on record which is Ex.D-2. Sadhu Singh executed a registered Will dated January 4, 1978 in favour of defendant – respondent No.1 - Amarjit Singh which has been proved as per the requirement of law and is Ex.D-1. So, when Sampuran Singh has already sold away the property in suit and delivered its actual physical possession, he or his successors have left no right or interest. Thereafter, Sadhu Singh raised the construction of the house and got an electric connection released in his name. In such circumstances, appellant – plaintiff has no legs to stand. Rather, it can be said that he has approached the court with grubby hands and has not disclosed the real and actual facts while filing the suit.

10. There is no question of law involved in the instant appeal, much less, substantial question of law. The judgment and decree dated September 17, 2013 delivered by the trial court and affirmed by the lower appellate court vide judgment dated May 29,

2014 are absolutely in consonance with the evidence available on file and settled canons of law, and do not call for any interference by this Court. There is no illegality, infirmity or impropriety in the judgments and decrees under challenge.

11. As a net result of the aforesaid discussion, the appeal is dismissed whereby the judgments and decrees of both the courts below are affirmed.

12. No order as to costs.

January 30, 2015
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(Jaspal Singh)
Judge