

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.592 of 2015 (O&M)
Date of Decision: May 18, 2015

Hari Chand

...Appellant

Versus

Smt.Basan Kaur and others

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sukhdeep Singh Bhinder, Advocate
 for the appellant.

INDERJIT SINGH, J.

CM No.1738-C of 2015

For the reasons mentioned in the application, the same is allowed. The delay of 83 days in re-filing the appeal is condoned.

RSA No.592 of 2015

Appellant-plaintiff Hari Chand has filed this regular second appeal against Smt.Basant Kaur, Mander Kaur alias Balwinder Kaur, Balwinder Singh, Mohinder Singh and Jagdev Singh respondents-defendants challenging the impugned judgment and decree dated 01.06.2012 passed by learned Civil Judge (Junior Division) Abohar, vide which the suit filed by plaintiff for possession and permanent injunction was dismissed and also challenging the judgment and decree dated 16.07.2014 passed by learned Addl. District Judge, Fazilka, vide which the appeal filed by the appellant-plaintiff was also

dismissed.

The brief facts of the case are that plaintiff-appellant filed a suit against Smt.Basant Kaur and other defendants for possession and permanent injunction by stating that husband of defendant No.1 and father of defendants No.2 to 5, being owner in possession of the suit land entered into agreement to sell his property to plaintiff in presence of marginal witnesses and put the plaintiff in actual and physical possession of the suit land. The possession of the plaintiff is continuous, uninterrupted and without any objection and defendants have no concern with the possession of the suit property. Plaintiff requested defendants many times to execute the sale deed regarding suit property in his favour on the basis of agreement to sell but in vain.

Upon notice, defendants filed written statement and took the plea that agreement to sell is forged and fabricated document as the same was prepared fraudulently and later on some additions have been made in order to cheat and defraud the defendants. It is further stated that alleged agreement to sell is without consideration. No such agreement was executed by Gurbachan Singh in favour of the plaintiff. The defendants also filed counter claim asking for the relief for grant of decree of possession of the land measuring 12 marlas i.e. one plot Gair-Mumkin comprised in khasra No.256(0-10) and one Garah Khad Gair-Marusi comprised in khasra No.732(0-2), on the basis of Jamabandi for the year 2003-04 and further sought relief regarding mesne profits.

The plaintiff in replication denied the counter claim and

stated that the defendants have inherited the estate of Gurbachan Singh, so they are liable to execute the sale deed in favour of the plaintiff.

Learned Civil Judge (Junior Division) Abohar vide judgment and decree dated 01.06.2012, dismissed the suit for possession and permanent injunction filed by the plaintiff but decreed the counter claim of the defendant and plaintiff was directed to vacate the suit property and hand over its possession of the suit property to defendants by way of specific performance within one month.

Against above-said judgment and decree, an appeal was filed by the appellant-plaintiff and learned District Judge, Fazilka, vide judgment and decree dated 16.07.2014, dismissed the appeal.

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

I have heard learned counsel for the appellant and have gone through the record.

From the record, first of all, I find that the findings given by the Courts below are concurrent. Both the Courts below have appreciated the evidence in right perspective. There is nothing on the record to show that the evidence has been misread by the Courts below. The findings given by the Courts below are as per law and evidence on record. The perusal of the record shows that no substantial question of law arises in this regular second appeal. Learned Civil Judge (Junior Division) Abohar has discussed the pleadings as well as the evidence. It is held in the judgment that the

cross-examination of the plaintiff is very material as during his cross-examination, he has specifically admitted that in the agreement Ex.P2, some lines have been written again but he does not know about the same and the same is in the knowledge of the Deed Writer Kuldeep Singh but Deed Writer has not been examined by the plaintiff to clarify this alteration in the agreement to sell Ex.P2. The perusal of the agreement shows that there is overwriting on the third line of the agreement and same has been written afterwards and khasra No.634 measuring 10 marlas bearing plot No.256 has been added after execution of the agreement Ex.P2. The Court also held that plaintiff has sought the relief of possession of property bearing khasra No.256 (0-10), 732(0-2), whereas khasra No.756(0-10) has been written in the agreement to sell afterwards. It is also written that khasra No.256 has been sold for ₹3700/- to the plaintiff whereas afterwards in the said agreement, it is written that suit property has been sold @ ₹700/- and learned Civil Judge reached to the conclusion that agreement to sell has been altered materially and plaintiff has failed to clear the above-said doubt as to who has altered the agreement to sell dated 23.09.1983. The plaintiff has produced the document and he is to explain the same. Otherwise also, the perusal of the agreement to sell dated 23.09.1983 shows that it was not an agreement to sell, rather it is an unregistered sale deed written on the stamp paper in the shape of *Ikrarnama* (agreement). No date has been fixed in this document for execution of the sale deed. Rather, the contents of this document show that it is a sale deed and it is written that from that

date i.e. 23.09.1983, Hari Chand had become owner and Gurbachan Singh had no title thereafter.

Keeping in view the above discussion, I find that learned Courts below have correctly dismissed the suit for possession and permanent injunction on the basis of this document dated 23.09.1983. Further, I find that the defendants are owners of the property in dispute. They being the owners, are entitled to possession over the suit property. Therefore, the counter claim has been rightly decreed and learned Addl. District Judge, Fazilka has rightly dismissed the appeal of the plaintiff.

In view of the above discussion, I find that the findings given by the Courts below are correct, as per law and 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 present regular second appeal, the same is dismissed.

May 18, 2015
Vgulati

(INDERJIT SINGH)
JUDGE