

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.4403 of 2014(O&M)

Date of Decision : 2.3.2015

Sukhwinder Kaur

.....Appellant

Versus

Paramjit Singh and ors.

.....Respondents

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Ms. Amandeep Soni, Advocate for the appellant.

GURMIT RAM, J.

CM No.10183-C of 2014

For the reasons mentioned in the application, the delay of 5 days in re-filing the present appeal is condoned.

The civil miscellaneous application stands disposed of accordingly.

RSA No.4403 of 2014

Learned counsel for the appellant has contended that the judgments and decrees passed by both the learned Courts below are merely based on conjectures and surmises and as such the same are not tenable in the eyes of law. It is further her contention that the above said judgments and decrees are also liable to be set aside being against the real facts of the case as well as the evidence on the record. It is further her contention that presumption is attached to the execution of the sale-deed which is a public document and as such there is no need to examine any

of its attesting witnesses. Both the learned Courts below have wrongly held that the appellant has failed to prove her ownership of the property in dispute by observing that she failed to prove the execution of sale-deed in question as well as her possession and construction of the alleged house over the suit property. Both the learned Courts below have also failed to apply their judicious mind to the matter in issue which has resulted in miscarriage of justice.

2. Now let us see the suit of the appellant-plaintiff, in brief, filed by her in the learned trial Court. Her claim in the suit is that the suit land is the ownership of Shamlat Taraf Pati. Sukhdev Singh and Nihal Singh, father of defendant No.1 was owner in possession of the suit land as a co-sharer. The said Nihal Singh who is father of defendant No.1 and grandfather of defendants No.2 and 3 executed a sale-deed of the land measuring 15 marlas as detailed in the head-note of the plaint during his lifetime as per his share in favour of the plaintiff on 29.7.1985 for a sale consideration of Rs.2,000/- and consequently she became the owner of the suit property. Thereafter, she along with her husband constructed a residential house on this property. Defendants No.2 and 3 earlier filed a suit for permanent injunction against the plaintiff and her husband Jaswant Singh in the Court of Additional Civil Judge(Sr.Divn.), Ajnala in which the application for grant of stay was dismissed. Thereafter, defendant No.1 along with some other persons demolished the above-said residential house of the plaintiff on 25/26.9.2005 and took away its debris. In this regard an FIR No.189 of 2005 under Sections 379, 427, 148, 447, 448 read with Section 149 of the IPC was registered against the

defendants and his associates. Hence the present suit for recovery of damages along with interest etc.

Upon notice, defendants took preliminary objections in the written statement that suit is not maintainable; that plaintiff has no locus-standi as well as cause of action and that she is also estopped to file this suit by her own act and conduct. On merits, they claimed the possession of the suit property as its owners. It is denied that Nihal Singh had executed the alleged sale-deed dated 29.7.1985 in favour of the plaintiff during his lifetime or that plaintiff had become the owner in possession of the suit property on the basis of this sale-deed. This sale-deed is alleged to be a forged and fabricated document. Earlier Nihal Singh was in possession of the property in dispute and after his death now defendants are in its possession. It was also denied that defendant No.1 along with his associates had demolished the residential house of the plaintiff as alleged in the plaint.

3. In the matter in dispute, the appellant has mainly relied upon the sale-deed Ex.P2 dated 29.7.1985 in order to substantiate her claim qua suit property. This sale-deed was exhibited in the statement of PW4 Sukhwinder Singh, Registration Clerk. Neither any of the attesting witnesses of this sale-deed nor its scribe was examined to prove its execution. Under the provisions of Section 68 of the Evidence Act at least one attesting witness is required to be examined to prove valid execution of any sale deed which in the present case appellant has failed to do before the learned trial Court. It is settled law that merely marking of exhibit on a document does not dispense with its proof, which is

required to be done in accordance with law. Herein the principles as laid down by the Hon'ble Apex Court in **LIC of India and Anr. Versus Ram Pal Singh Bisen, 2010(2) SLR 792** and **Kaliya Versus State of Madhya Pradesh, 2013(10) SCC 758** are relied upon.

4. Then it is admitted by plaintiff as PW2 and her husband as PW3 in their cross-examination that they applied for the sanction of the mutation of disputed property. The defendants No.2 and 3 filed an appeal against her which was accepted. Then the further appeal filed by the plaintiff before the Court of Additional Commissioner (Appeals) Jalandhar was dismissed vide order dated 19.12.2008. Meaning thereby, till date no mutation has been sanctioned in favour of the present appellant on the basis of alleged sale deed Ex.P2.

5. Then the appellant has also failed to produce on record any proper evidence with regard to the raising of construction of alleged house over the suit property. She has not examined any mason or any other person who was engaged as a labourer in raising the said construction. The bill Ex.P12 produced by the appellant before the learned trial Court is also not properly proved for the reason that it was not produced from the proper custody nor the person who had issued the same was examined. As per the record, it was tendered in the statement of counsel for the appellant-plaintiff along with some other documents. It is not such a document which is per se admissible in evidence and as such it carries no value being meaningless in the eyes of law.

6. Then it is also the case of the appellant that she had got lodged an FIR No.189 of 2005 under Sections 379, 427, 148, 447,

448 read with Section 149, IPC, against the respondents and others, but in this regard appellant as PW2 in her cross-examination has admitted that the alleged accused persons in that criminal case were acquitted.

7. Then in the documents Ex.D1, Ex.PX and Ex.PY, Dalbir Singh son of Nihal Singh and Paramjit Singh, Harpal Singh sons of Lakha Singh are shown to be in cultivating possession of the suit land.

8. Statement of PW5 David Masih, Draftsman who had prepared the site-plan Ex.P3 after visiting the spot also did not support the case of the appellant for the reason that he had stated that there was no construction at all in the site-plan and the site-plan is bounded by the wall of Baba Lakha Singh and his family.

9. If the stay application of the respondents in the suit for permanent injunction which they had filed earlier was dismissed, then that does not mean that suit of the appellant stand proved automatically. For getting the relief which the appellant had sought in the instant suit, she was to make her case at her own by leading cogent and reliable evidence. For this purpose she was not to rely upon the lapses of the other party.

10. In the light of the above discussion, no ground to make any interference of any kind in the impugned judgments and decrees is made out. This appeal being meritless stands dismissed and disposed of accordingly.

2.3.2015

Brij

**(GURMIT RAM)
JUDGE**

1. Whether Reporters of local papers may be allowed to see the judgment?
No/Yes
2. Whether to be referred to the Reporters or not? No/Yes
3. Whether the judgment should be reported in the Digest? No/Yes