

Regular Second Appeal No.2560 of 2011 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2560 of 2011 (O&M)

Date of Decision: August 8th, 2016

Gurdev Singh

...Appellant

Versus

Gurmeet Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Ms.G.K.Daulat, Advocate,
for the appellant.

Mr.Tushar Sharma, Advocate,
for respondent No.1.

Mr.Rajender Kumar, Advocate for
Mr.P.S.Dhaliwal, Advocate,
for respondent No.5.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby the suit seeking declaration and consequential relief of permanent injunction for rectification of the sale deeds dated 11.3.1995 whereby the property was sold by vendors Gurmeet Kaur and Mohinder Kaur, has been dismissed by both the Courts below.

Ms.G.K.Daulat, learned counsel for the appellant-plaintiff

submits that the aforementioned persons had sold the property described in the sale deeds dated 11.3.1995 showing sale price as ₹99/- each. Since stamp papers were not available, therefore, aforementioned documents were not registered. The plaintiff was put in possession of the property, but realising that actual possession had not been given, sought the intervention of the Court through declaration and permanent injunction. Both the Courts below have heavily relied upon judgment and decree dated 16.8.1999 (Ex.D3 and Ex.D4) passed against one Gurdev Singh son of Ajmer Singh as all the defendants vendors. She further submits that the documents less than ₹100/- do not require any registration and, therefore, the rigours of the Registration Act, 1908 ought not to have come into the way. The cause of action accrued only in the year 1999 and accordingly the suit was filed, which cannot be said to be, *prima-facie*, barred by law of limitation. The boundary walls mentioned in the sale deeds were not in existence at the time of the actual possession and in this backdrop of the matter, the suit seeking aforementioned relief was filed. The Courts below have ignored all these aspects and, thus, prays for setting-aside of the impugned findings.

Mr.Tushar Sharma, learned counsel for respondent No.1 and

Mr.Rajender Kumar Advocate for Mr.P.S.Dhaliwal, learned counsel for

respondent No.5 submit that witnesses of the plaintiff in cross-

examination spilled the beans vis-a-vis the price of the property. PW-1 stated that at the time of execution of the sale deeds, the price of the land was ₹15,000/-, whereas as per other witnesses, the price was ₹6,000/-. No explanation has come on record for non-registration of the aforementioned sale deeds. It has been proved on record that the possession was with Gurdev Singh. Appellant-plaintiff instituted a suit seeking injunction against the aforementioned Gurdev Singh, but the same was dismissed as per the judgment and decree, as noticed above. Even the sale deeds have been denied, much less possession and plaintiff has miserably failed to discharge the onus and, thus urges this Court for affirming the findings and dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book.

Judgment and decree Ex.D1 and Ex.D2 are matter of record. These are against Gurdev Singh son of Ajmer Singh, who is stated to be in possession. It reveals that the plaintiff was never put into possession in pursuance to the sale deeds and, therefore, reference of possession was as symbolic possession. Witness Chamkaur in cross-examination admitted that the price of the property at the time of sale deed was ₹15,000/-. PW-3 stated the price as ₹6,000/-, yet the plaintiff has not explained the

once the sale deeds were not executed, much less valid in law, therefore, rectification as prayed for could not be sought. Possession of Gurdev Singh is matter of admission at the behest of the plaintiff, but only suit for declaration and permanent injunction had been filed. In my view, the plaintiff has miserably failed to prove the ownership, much less the possession and, therefore, could not seek rectification as noticed above.

For the foregoing reasons, I find no illegality and perversity in the findings of both the Courts below, which are based upon appreciation of oral and documentary evidence. No substantial question of law arises for determination. No case for interference is made out.

Appeal stands dismissed.

August 8th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No