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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2717-2011 (O&M)
Date of decision : 22.11.2016

Ram Pal

... Appellant

Versus

Mukhtiar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Chetan Bansal, Advocate
for the appellant.

Mr. Suvineet Sharma, Advocate
for respondent Nos.1 to 4.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the following claim has been declined by both the Courts below:-

“A declaratory decree with costs with consequential relief of permanent injunction with mandatory injunction with costs may kindly be passed in favour of plaintiff and against the defendants by declaring the sale deed executed on 25.09.1989 and registered on 26.09.1989 in favour of defendant Nos.1 to 4 bearing document No.4896 Bahi No.1 Zild No.565, registered in the office of Joint Sub Registrar, Rohtak qua Rect. No.144 Killa No.23/2 (3 kanals 9 marals) as also given in detail in the sale deed attached with the plaint and consequential relief of decree of permanent injunction restraining the defendants No.1 to 4 in interfering in any way, alienating in any way and

restrained from dispossesses the plaintiff from the land bearing Rect. No.144, Kill No.23/2 situated at Village Bohar District Rohtak and as given in the exchange deed executed in favour of the plaintiff of the father on 04.05.1964 and sale deed executed in favour of plaintiff by LRs of late Bhup Singh on 14.03.2000 bearing document No.9016, Jild No.674.”

Mr. Sunil Chadha, learned Senior Counsel assisted by Mr. Chetan Bansal, learned counsel appearing on behalf of the appellant-plaintiff submits that the suit aforementioned was filed challenging the sale deed dated 25.09.1989 executed by Nomigar and Tale in respect of land measuring 11 kanals 12 marlas particularly Rect. No.144, Killa No.23/2 measuring 3 kanals 9 marlas as by virtue of three exchange deeds of 04.05.1964 (Ex.P-10, Ex.P-11, Ex.P-12). Both the aforementioned persons, earlier, had exchanged the land measuring 332, 317, 453 sq. yds. The beneficiary of the exchange deeds were Amar Singh, father of the appellant-plaintiff, Dariya and Bhoop Singh. The appellant-plaintiff vide sale deed 14.03.2000 (Ex.P-16) had purchased the land measuring 325 sq. yds. out of 453 sq. yds from the legal representative of Bhoop Singh. The total area of Rect. No.144 Kill No.23/2 was 3 kanals 9 marlas approximately 2085 sq. yds. The erstwhile owners, namely, Nomigar and Tale, left with ownership of remaining piece of land i.e. 1049 sq. yds. and in this aspect of the matter, the Courts below, particularly the trial Court dismissed the suit on the premise that the appellant-plaintiff has not been able to connect the property.

He further submits that once Nomigar and Tale had no saleable title or interest in Rect. No.144 Killa No.23/2, it could not have been sold to

defendant Nos.1 to 4 vide the sale deed dated 25.09.1989, though, there are other killas number also. All the exchange deeds had specifically given the descriptions. The exchange deed of Bhoop Singh has been proved on record as Ex.P-12 and the true translation of the same has been annexed as Annexure A-1 and it reflects the specific boundary, but the lower Appellate Court has erroneously held that the exchange deed of Bhoop Singh (Ex.P-12) had not given any specific portion, much less, specific area.

He further submits that finding aforementioned is totally alien to the documentary evidence, thus, there is a gross illegality and perversity. It is the fit case, where the judgment and decree of the lower Appellate Court is liable to be set aside on this short ground alone, besides there are other certain arguments, much less, it can be a ground for remand.

At this stage, Mr. Suvineet Sharma learned counsel appearing on behalf of the respondent Nos.1 to 4 does not dispute the contents of Exchange Deed (Ex.P-12) and submits that since the lower Appellate Court being the last Court of fact and law is required to examine the documentary evidence and the decision thereof, the aggrieved party would have a right of appeal which should not be taken away.

After hearing the submissions of the learned counsel for the parties as noticed above, I am of the view that before accepting of contentions of Mr. Sunil Chadha, for remand of the matter, it would be apt to reproduce the findings rendered by the lower Appellate Court which reads thus:-

“A perusal of record shows that Nomigar and Tale sons of Shergar were owners in possession of 3 kanals 9 marlas land falling in Rect. No.144 Kill No.23/2 in Village Bohar District

Rohtak. They exchanged their plot of 11 marals equal to 332 $\frac{3}{4}$ sq. yards bearing Rect. No.144, Kill No.23 with plot 10 marlas of Kill No.70/1 measuring 7 kanals 11 marals with Amar Singh who is father of plaintiff vide registered exchange deed Ex.P10 dated 04.05.1964. Nomigar and Tale entered into another exchange deed dated 04.05.1964 (Ex.P-12) vide which they exchanged their 10 marlas land with Bhoop Singh from whose LRs plaintiff purchased the suit property vide sale deed dated 14.03.2000 Ex.P16. Though a perusal of exchange deed Ex.P10 and sale deed Ex.P-16 shows that both the properties adjoins each other on western side, but a perusal of exchange deed Ex.P12 dated 4.5.1964 shows that Nomigar and Tale had given a share only to Bhoop Singh and no specific boundaries are mentioned therein, thus, no reliance can be placed on sale deed Ex.P16 to return a finding in favour of appellant that he is owner in possession of suit property and sale deed dated 25.09.1989 in favour of respondent Nos.1 to 4 is liable to be cancelled. Moreover Tale and Nomigar were joint owner of land and, thus, they were not in a position to exchange any specific killa number with Bhoop Singh. Since the appellant has failed to prove his possession in a specific killa number and therefore, his reliance on Bal Kishan's case (supra) is misconceived. When vide exchange deed Ex.P12 Bhoop Singh was not given any specific area to the plaintiff. In this situation, instead of filing the present suit the appellant should have filed a suit for partition.”

I would refrain myself from pondering upon the merits and demerits of the matter as it would seriously affect the right of the parties to the *lis* and therefore, I deem it appropriate that since the judgment and decree of the lower Appellate Court is not sustainable on this ground and the same is hereby set aside. Matter is remitted back to the lower Appellate Court to decide the appeal afresh in accordance with law on all grounds.

Learned counsel for the parties and as well as the parties are directed to appear before the lower Appellate Court on 12.12.2016.

With the aforesaid observations, the appeal stands disposed of.

22.11.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓
Whether speaking/reasoned Yes/ No
✓
Whether Reportable Yes/ No