

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 5611 of 2015(O&M)

Date of Decision:15.3.2016

Jai Singh

---Appellant

vs.

Jawahar Lal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.A.K.Gahlawat, Advocate
for the appellant

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

CM No. 13596-C of 2015

Prayer in this application is for condoning delay of 100 days in refiling the appeal.

In view of averments made in the application supported by an affidavit of counsel for the appellant and arguments addressed, the application is allowed and delay of 100 days in refiling the appeal is

condoned.

RSA No. 5611 of 2015

The present appeal has been directed against the judgment and decree dated 30.3.2015 passed by the Additional District Judge, Gurgaon, setting aside the judgment and decree dated 31.7.2013 passed by the Civil Judge (Junior Division), Gurgaon (for brevity “the trial court”) dismissing suit of the respondents-plaintiffs and as a result, suit filed by the respondents for grant of permanent injunction was allowed.

The respondents/plaintiffs staked their claim for permanent injunction on the plea that they are owners in possession of plot measuring 85 square yards situated in Dayanand Colony, Gurgaon, detailed in the head note of the plaint, purchased from Rameshwar Saini and Azad Singh vide Vasika No. 14143 dated 25.1.2002. Mutation was sanctioned in favour of the plaintiffs on 1.4.2002. The defendants are strong headed persons and are interfering in peaceful possession of plaintiffs over the suit property.

The appellant-defendant No. 1 filed the written statement raising preliminary objections inter alia maintainability of the suit, suit without cause of action and the respondents being estopped from filing the suit. It is averred that the suit land is joint and has not been partitioned. Agricultural land cannot be sold for residential purpose without obtaining permission for change of land use from the competent authority.

The learned trial court, in view of its findings recorded in para 11 of the judgment, non-suited claim of the respondents/plaintiffs. The judgment and decree passed by the trial court was set aside by the Additional District Judge by relying upon the documents as well as oral

evidence adduced by the respondents/plaintiffs.

Counsel for the appellant has submitted that the learned trial court rightly refused to rely upon the documents marked as exhibits for want of producing their originals on record. It is further submitted that the appellate court without any justifiable and tangible reason has set aside the well considered judgment passed by the trial court, therefore, the judgment and decree passed by the first appellate court cannot be allowed to sustain.

I have heard counsel for the appellant, perused the records particularly the judgments passed by the courts below.

A plain reading of the findings recorded by the learned trial court would make it evident that the respondents examined Ved Parkash, Halqa Patwari PW2, Prabhu Dayal, registration clerk of the office of Sub Registrar, Gurgaon PW3 and Parkash Chand Saini, Draftsman as PW4. The Halqa Patwari and official from the office of the Sub Registrar, Gurgaon brought the original records at the time of recording their evidence and the copies of documents were exhibited in their statements. As the original records were produced before the court by the witnesses in whose testimony the documents were marked as exhibits, I find myself unable to accept submissions of counsel for the appellant that either the trial court rightly discarded the documents or the appellate court has committed any error much less illegality in rectifying the error committed by the trial court with regard to those documents being admissible and liable to be taken into consideration. Keeping in view the evidence on record, I do not find any error much less illegality in the impugned judgment as would call for

intervention.

For the reasons aforesaid, finding no merit, the appeal is dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

15.3.2016
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