

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

Date of decision: 09.08.2017

1. RSA No.2335 of 2011 (O&M)

Devender

... Appellant

Vs.

Attar Singh and others

... Respondents

2. RSA No.2342 of 2011 (O&M)

Sube and another

... Appellants

Vs.

Savitri

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

**Present: Ms. Neha Jain, Advocate
for the appellants.**

RAMESHWAR SINGH MALIK, J. (ORAL)

These two identical regular second appeals bearing RSA No.2335 of 2011 and RSA No.2342 of 2011, are being decided together vide this common order, with the consent of learned counsel for the appellants, as both these appeals are arising out of same set of facts and raise identical issues. However, for the facility of reference, facts are being culled out from RSA

No.2335 of 2011 (Devender Vs. Attar Singh and others).

Brief facts of the case, as noticed by the learned first appellate Court in para 1 of its impugned judgment, are that the plaintiffs were owners in possession of two plots shown by letters ABCD and EFGH in the enclosed site plan. Plaintiffs had raised the boundary wall around the suit property and were using the same for their personal purposes. Defendants No.1 and 2 had no right or interest in the suit property. However, defendants No.1 and 2 sold the suit property to defendant No.3 vide sale deed dated 21.07.2000 for Rs.26,000/-. Abovesaid sale deed dated 21.07.2000 was based upon fraud and misrepresentation. No exchange of money had taken place between the parties and the present sale deed was executed only to cause loss to the plaintiffs. On 05.02.2009, forefathers of defendants No.1 and 2 had gifted the suit property to the forefathers of the plaintiffs. Mutations No.3010, 3011, 3013 and 3014 were sanctioned in favour of Hardwari in this behalf. Defendants had no concern with the suit property in any manner. Through present suit, the plaintiffs sought a decree of declaration that the plaintiffs were owners in possession of the suit property and impugned sale deed dated 21.07.2000 in favour of defendant No.3 was illegal, null and void and not binding upon the rights of the plaintiffs. Plaintiffs also sought the consequential relief of permanent injunction etc. against the defendants.

Defendants were put to notice. They contested the suit by filing their written statement. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiffs are owners in possession of the suit property mentioned in para No.1 of the plaint? OPP

2. Whether the sale deed dated 21.07.2000 executed by the defendants No.1 and 2 in favour of defendant No.3 qua the suit property is illegal, null and void? OPP
3. Whether the plaintiffs are entitled for the relief of injunction as prayed for? OPP
4. Whether the suit filed by the plaintiffs is not maintainable? OPD
5. Whether the plaintiffs have no locus-standi to file the present suit? OPD
6. Whether the suit filed by the plaintiffs is time barred? OPD
7. Whether the suit of the plaintiffs has not been properly valued for the purpose of Court fees? OPD
8. Whether defendant No.3 is a bonafide purchaser for consideration? OPD
9. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiffs have failed to prove their case for want of sufficient and cogent evidence. Accordingly, their suit for declaration, permanent injunction and possession was dismissed by the learned trial Court, vide its impugned judgment and decree dated 02.02.2009. Feeling aggrieved, plaintiff-appellant filed his first appeal, which also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 22.02.2011.

Hence this regular second appeal bearing RSA No.2335 of 2011 at the hands of unsuccessful plaintiff.

In the second case, appellants were defendants. Plaintiff was none else, but sister of defendant-appellant No.1. It was suit for permanent injunction, wherein, after completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the suit of the plaintiff has properly valued for the purpose of Court fee? OPD
4. Relief.

On the basis of evidence led by both the parties, learned trial Court decreed the suit vide its impugned judgment and decree dated 02.02.2009. Defendants filed their first appeal, which was also dismissed by the learned first appellate Court vide its impugned judgment and decree dated 22.02.2011. Hence this regular second appeal bearing RSA No.2342 of 2011 at the hands of unsuccessful defendants.

Heard learned counsel for the appellants in both these appeals.

Defendant No.3 in the present case was the plaintiff in the other case. Similarly, plaintiffs in the present case were defendants in the other case. Plaintiffs-appellants filed a suit for declaration, permanent injunction and possession on the basis that they were owners in possession of two plots out of khasra No.8051. It was their further pleaded case that forefathers of defendants No.1 and 2 gifted the suit property to forefathers of the plaintiffs on 05.02.1909.

Neither the alleged gift deed ever seen light of the day nor the plaintiffs-appellant could prove their pleaded case. They were also unable to connect the suit property with khasra No.8051. Since appellant was one of the plaintiffs, onus was on the plaintiffs to prove their pleaded case but they miserably failed to do so, because of which they were bound to fail. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within the jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

On the other hand, specifically pleaded and proved case of the contesting defendant-respondent No.3 was that she purchased the suit land by way of sale deed dated 21.07.2000. She claimed and proved herself to be a bonafide purchaser for due consideration. This fact was admitted by Sube Singh PW3 that defendants No.1 and 2 have sold the suit property in favour of defendant No.3. Defendant-respondent No.3 was none else but real sister of Sube Singh PW3, who was defendant No.1 in another case. Plaintiff-appellant examined himself as PW4. Interestingly, appellant expressed his ignorance whether defendants No.1 and 2 have sold the suit property to defendant No.3. Sale deed dated 21.07.2000 was duly proved by DW1 Anil Kumar, Registry Clerk. This sale deed dated 21.07.2000 was duly proved on record as Ex.D1. Under these undisputed facts and circumstances, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Plaintiffs-appellant challenged the validity of sale deed dated 21.07.2000 Ex.D1, raising the plea of fraud. However, they miserably failed to

prove their plea of fraud, which was liable to be proved as a criminal charge. It is very easy to raise the plea of fraud, but the same is equally difficult to be proved. That is what has happened in the present case as well. Although the plaintiffs raised the plea of fraud, but they failed to bring on record any cogent evidence in this regard, so as to prove the plea of fraud raised by them.

In this view of the matter, plaintiffs were bound to fail in the present case. Similarly, in the other case, since the case of the plaintiff who was defendant-respondent No.3 in the case in hand, was based on same cogent and convincing evidence i.e. registered sale deed dated 21.07.2000, her suit was rightly decreed by both the learned Courts below. Under these circumstances, both the impugned judgments and decrees rendered by the learned Courts below in both these cases deserve to be upheld, for this reason as well.

The learned Additional District Judge, before arriving at his just conclusion rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant findings recorded by the learned first appellate Court in paras 18 to 21 of its impugned judgment, which deserve to be noticed here, read as under: -

“Thus it is apparent that the plaintiffs have miserably failed to prove that the suit property forms part of the khasra No.8051. It is also not proved that the plaintiffs are the owners of the khasra No.8051 as claimed by them.

Significantly, plaintiff Devender (PW4) admits in his cross-examination that the plaintiffs are not in possession of the suit land after the sale thereof. This admission by the plaintiff clearly proves that the plaintiffs are not even in possession of the suit land. In

fact, there is no evidence on record to prove that the plaintiffs ever remained in possession of the suit land at any stage. Law is settled that the plaintiffs cannot even seek the relief of permanent injunction under these circumstances. The case of the plaintiffs against the defendants is rendered still more doubtful under these circumstances.

Under these circumstances, the plaintiffs miserably failed to prove that they are entitled to the relief of declaration and permanent injunction as prayed for by them.

In these premises, no fault can be found with the impugned judgment/decreed dated 2.2.2009 of learned trial Court. For reasons stated above, the said impugned judgment and decree of learned trial Court is hereby affirmed.”

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. She also failed to refer to any question of law, much less substantial question of law, which is sine qua non for entertaining any regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered

view that both these appeals having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, both these regular second appeals stand dismissed, however, with no order as to costs.

09.08.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No