

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4513 of 2012 (O&M)
Date of decision: 11.05.2017

Bachan Singh

... Appellant

Vs.

Bhagwan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Raman Mohinder Sharma, Advocate
for the appellant.

Mr. R.S. Bains, Advocate
for the respondent.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendant is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby his first appeal was dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 26.04.2012, upholding the impugned judgment and decree dated 06.03.2009 passed by the learned trial Court, decreeing the suit of the plaintiff for declaration and permanent injunction.

Brief facts of the case, as recorded by learned first appellate Court in para 2 of its judgment, are that plaintiff Bhagwan Singh filed a suit for declaration to the effect that he was the owner and in possession of the land measuring 02 kanals 09 marlas, fully detailed in the heading of the plaint, situated at Village Moonak to the extent of 1/4th share on the basis of sale deed No.1807 dated 01.10.1974, 01.11.1974 and mutation No.1460 had been entered

and sanctioned in his favour, but name of the defendant was wrongly continuing in the revenue record of rights, which was liable to be corrected and plaintiff sought permanent injunction for restraining the defendant from interfering in the peaceful possession of the plaintiff and from alienating the said land to anyone in any manner.

Having been served in the suit, defendant-appellant appeared and filed his contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is co-owner in possession of the suit property vide sale deed dated 01.10.1974? OPP
2. Whether the plaintiff is entitled to declaration as prayed for? OPP
3. Whether plaintiff is entitled to injunction as prayed for? OPP
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Relief.

With a view to substantiate his pleaded case, plaintiff appeared as PW1, examined Major Singh as PW2, R.V. Vashishat-Documents Expert as PW3 and Amrik Singh as PW4. He also tendered into evidence other relevant documents. However, the defendant-appellant, except making his self-serving statement as DW1, did not produce any other witness. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiff has duly proved his case, by leading cogent and convincing evidence. Accordingly, suit of the plaintiff was decreed, vide impugned judgment and decree dated 06.03.2009.

Feeling aggrieved, defendant filed his first appeal, which also came to be dismissed by the learned first appellant Court, vide its impugned judgment and decree dated 26.04.2012. Hence this regular second appeal at the hands of the defendant.

Heard learned counsel for the parties.

It has gone undisputed before this Court that case of the plaintiff was based on a registered sale deed, which was duly proved by him, by leading the relevant evidence. Except simple and oral denial at the hands of the defendant-appellant, there was hardly any other evidence produced by him in support of his pleaded case. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

Once the plaintiff-respondent has discharged his initial onus, it was for the defendant-appellant to prove his case, as pleaded in his written statement. Except making his self-serving statement as DW1, appellant-defendant did not produce any other witness in support of his case. Under these undisputed facts and circumstances of the case and keeping in view the sufficient evidence having been brought on record by the plaintiff, 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.

Before arriving at its judicious conclusion, the learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned Additional District Judge in paras 16 to 18 of his impugned judgment, which deserve to be noticed here,

read as under: -

“After hearing the arguments of the learned counsel for the parties and going through the entire oral as well as documentary evidence on file, this Court is of the considered view that although the defendant has denied the execution of the sale deed and getting the mutation sanctioned in favour of the plaintiff, therefore, it was not incumbent upon the defendant (appellant) to prove the fact that the sale deed and the mutation are wrong, forged and fabricated documents by leading cogent and convincing evidence. A perusal of record reveals that the defendant has failed to rebut the cogent and convincing documentary evidence of the plaintiff. Except bald statement of the defendant, he has not produced any other evidence in support of his contentions. Whereas on the other hand, the case of the plaintiff stands duly proved on record by cogent and convincing evidence, especially through the testimony of Shri R.V. Vashishat, Documents and Finger Prints Expert, who appeared as PW-3 and proved his report as Ex.P40 vide which he compared the disputed signatures appearing on the sale deed (Ex.P1) that was appended by Bachan Singh before the Sub Registrar and compared the same with the specimen taken in the court and he specifically opined that the same were of the same person. It is worth mentioning here that in order to rebut the evidence of Shri R.V. Vashishat, Documents Expert (PW-3), the defendant could have examined the Documents and Finger Prints Expert to prove the fact that the sale deed (Ex.P1) and mutation No.1460 (Ex.P2) are forged and fabricated documents and these do not bear his

signatures/Thumb impressions. But despite availing sufficient opportunities, the defendant has failed to examine the Documents and Finger Prints Expert to prove his contentions and this witness was the best evidence for the defendant. As the defendant has withheld the best evidence, therefore, this Court is bound to draw adverse inference against the defendant (appellant) to the effect that his contentions are not correct.

It is also pertinent to mention here that the sale deed (Ex.P1) is more than 30 years old document and during this period, the defendant did not challenge this sale deed for the reasons best known to him. Although in his written statement filed in the present suit, the defendant has denied the execution of the sale deed (Ex.P1) alleging that the same is forged and fabricated document, but even in the present suit, the defendant did not challenge the sale deed (Ex.P1) by way of filing the counter-claim. As already mentioned above, there is no evidence of the defendant to rebut the cogent and convincing evidence of the plaintiff, therefore, the only statement of the defendant is not sufficient to prove his contention. In the absence of any convincing evidence, the pleading of the party cannot be accepted as correct.

This Court is of the considered view that the men may tell a lie but the circumstances and documents may not. In the present case, it is manifest from the evidence of Bhagwan Singh plaintiff (PW-1), Major Singh (PW-2), Shri R.V. Vashishat, Documents Expert (PW-3) and Amrik Singh (PW-4) that sale deed dated 01.10.1974 registered on 01.11.1974 (Ex.P1) had been executed

and got registered by the defendant in favour of the plaintiff after receiving the balance sale consideration of Rs.500/-.”

During the course of hearing, learned counsel for the appellant could not point out any illegality in the impugned judgments and decrees passed by the learned Courts below. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the 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 the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

11.05.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No