

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3424 of 2013 (O&M)

Date of decision: 24.08.2017

Kamla

... Appellant

Vs.

Sushil Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Krishan Sehajpal, Advocate
for the appellant.

Mr. Malkeet Singh, Advocate
for respondent No.2.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby her suit for declaration with consequential relief of permanent injunction and in the alternative suit for possession, was dismissed by the learned trial Court vide its impugned judgment and decree dated 07.12.2011 and her first appeal was also dismissed by the learned District Judge vide impugned judgment and decree dated 01.03.2013, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in paras 2 and 3 of the impugned judgment, are that plaintiff along with defendants No.3 and 4 were the owners in possession of the land in dispute, situated in the area of Tungal Gate, Banga and bounded as under: -

East : Street;
West : Street;
North : Property of Mela Saini now Yashpal;
South : Previously property of Roop Lal son of Nanak Chand
and now plaintiff.

Accordingly, plaintiff filed a suit for declaration with consequential relief for permanent injunction restraining the defendants No.1 and 2 from interfering and dispossessing the plaintiff from the land in dispute and from encroaching upon by raising any type of construction therein, forcibly and unlawfully and suit for possession of property in dispute from defendant No.2.

It was pleaded in the plaint that plaintiff filed the suit through her attorney Inder Mohan, who was fully conversant with the facts of this case. Previously, deceased Chint Ram and Faquir Chand were the owners of the land in dispute, who sold the same to Rulia Ram vide registered sale deed dated 02.06.1930. The land shown in green colour in the site plan was also the part and parcel of the land shown in red colour, which was given to Roop Lal in family settlement and the same was sold by him to Jogi Ram alias Jogi Raj. Rulia Ram was owner in possession of the land in dispute, as shown in red colour and he died issueless and after his death, husband of the plaintiff inherited the property in dispute from Rulia Ram and after the death of Sat Parkash, the plaintiff and her sons (defendants No.3 and 4) had become the owners in possession of the land in dispute, being legal heirs of Sat Parkash. Defendant No.2 alleged that she had purchased the land in dispute from defendant No.1. The alleged sale deed, if any, was invalid, illegal, false, bogus, forged and fabricated and without consideration. Defendant No.1 was neither

owner nor had any concern with the land in dispute and as such had no right to alienate the same. Defendants No.1 and 2 were threatening to transfer and dispossess the plaintiff and also to encroach upon and to raise construction in the land in dispute forcibly and unlawfully.

Defendants were served in the suit. Defendant No.1 was proceeded against ex-parte. Defendants No.3 and 4 did not contest the suit being sons of the plaintiff. It was only defendant No.2 who appeared and filed the contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled for the relief of declaration, as alleged? OPP
2. Whether the plaintiff is entitled for the relief of permanent injunction, as alleged? OPP
3. Whether the plaintiff has no locus standi to file this suit? OPD
4. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
5. Whether the suit is barred by act and conduct of the plaintiff? OPD
6. Whether suit is bad for non-joinder of necessary parties? OPD
7. Whether suit is not maintainable in the present form? OPD
8. Whether plaintiff has not come to the Court with clean hands? OPD
9. Relief.

Both the parties produced their documentary as well as oral evidence, so as to prove their respective stands taken in their pleadings. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has failed

to prove her case for want of cogent and sufficient evidence. Accordingly, her suit for declaration with consequential relief of permanent injunction and in the alternative suit for possession was dismissed by the learned trial Court vide its impugned judgment and decree dated 07.12.2011. Feeling aggrieved, plaintiff filed her first appeal, which also came to be dismissed by the learned first appellate Court, vide impugned judgment and decree dated 01.03.2013. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Notice of motion was issued.

Heard learned counsel for the parties.

It is a matter of record that the entire case of the plaintiff-appellant was based on sale deed Ex.P3. Plaintiff-appellant was pursuing this litigation through her power of attorney Inder Mohan. He appeared as PW1 on behalf of the plaintiff. This material witness completely smashed the case of the plaintiff, for the reason that firstly, he was not well conversant with the facts of the case and secondly, he conceded that the sides of the property, as claimed in the suit, did not tally with the sale deed, upon which entire case of the plaintiff was based.

No reason was forthcoming as to why the plaintiff herself did not come forward to appear as her own witness, in support of her pleaded case. In such a situation, plaintiff was bound to fail. That is what has been held by both the learned Courts below, while recording their concurrent findings of facts. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Appellant, being the plaintiff, onus was on her to prove her case, by

leading cogent and convincing evidence. However, she failed to do so and that too for no good reasons. Plaintiff did not appear as her own witness. Her power of attorney, who appeared as PW1, was not aware about the facts of the case. Once it was conceded on behalf of the plaintiff-appellant that sides of the property, as claimed by the plaintiff in her suit, were not tallying with the sale deed Ex.P3, the plaintiff was rightly non-suited by both the learned Courts below. Under these undisputed facts and circumstances of the case, 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 his judicious conclusion, learned District Judge rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned first appellate Court in para 13 of its impugned judgment, which deserve to be noticed here, read as under: -

“Basically the claim of the plaintiff is based upon the sale deed dated 02.06.1930, proved on record as Ex.P3 and Ex.P3/A is the original sale deed in Urdu version, whereas its translated copy has been placed on the record, which proves that Chint Ram sold one taur, whose boundaries are as under: -

East : Kucha;

West : Passage;

North : Mela Saini and

South : Kucha, in the abadi of Banga.

However, the perusal of the sale deed does not disclose the

length and breadth of the sides of the property, subject matter of the sale deed. Moreover, Banga town is quite a big town and where the property is located has not been mentioned. No name of the area, ward number etc. has been given to locate the property. Therefore, the identity of the property is not decipherable and till the plaintiff/appellant has not been able to connect this property alleged to be sold by Nanak Chand in favour of Rulia Ram from whom she is seeking his inheritance, cannot be connected. Moreover, the plaintiff herself has not come in the witness box to prove how he connect the property and only her attorney has appeared, who says that he is not conversant with the facts of the case. During the course of arguments, the counsel for the appellant was not able to satisfy this Court how he has been able to connect this property as ownership of Rulia Ram, from whom she alleges to have purchased the property. It is the case of the plaintiff, although there may be some weak points in the case of the defendant, but in case the plaintiff claim declaration with regard to a particular property, then she is required to connect the documents of title of the property and in the present case, the plaintiff has not been able to connect the documents of title with the suit property. Therefore, the decree of declaration and injunction cannot be passed in favour of the plaintiff/appellant. Accordingly, the findings recorded by the learned lower Court on these issues are correct findings and this Court does not see any illegality in the findings recorded by the learned lower Court.

Accordingly, the findings of the learned lower Court on these issues are hereby affirmed.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the concurrent findings of facts recorded by the learned Courts below. He also could not raise 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 since no illegality has been found in the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld. Present regular second appeal 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, instant regular second appeal stands dismissed, however, with no order as to costs.

[**RAMESHWAR SINGH MALIK**]
JUDGE

24.08.2017
vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No