

RSA No. 2852 of 2016 (O&M)

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

**RSA No. 2852 of 2016 (O&M)
Date of Decision: 19.7.2017**

Rajinder Singh

.....Appellant

Vs.

Shaminder Kaur and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Deepak Gupta, Advocate
for the appellant.

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 his suit for declaration and permanent injunction was dismissed.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of the impugned judgment are that plaintiff is son of defendant no.3-Baldev Singh, defendant No.1 Shaminder Kaur is his step mother and defendant No.2 is his step brother. Earlier, plaintiff filed a civil suit No.184 dated 29.05.2010 against his father Baldev Singh and others in the Court of Shri Karan Garg, Civil Judge(Jr.Divn.), Bathinda, which was decided on 03.05.2012 on the basis of compromise effected between the parties. Since then the plaintiff was owner in possession of the suit land and he constructed a Service Station under the name and style Darshan Service

Station at village Badal in the suit land. Baldev Singh was mentally retarded person and was bed ridden and by taking benefit of his mental state, defendant No.1 executed sale deed No.599 dated 03.04.2013 in favour of her real son defendant No.2-Jashanpreet Singh on the basis of a forged and fabricated General Power of Attorney of Baldev Singh, which was just a paper transaction.

It was further averred on the basis of the impugned sale deed, that defendant No.2 got entered a mutation no.1988 dated 04.06.2013, in his favour. Both the sale deed dated 03.04.2013 and mutation dated 04.06.2013 were illegal, null and void, fictitious, result of fraud, manipulation, without consideration and inoperative qua the rights of the plaintiff and were liable to be ignored/set-aside. The defendants were requested to get the sale deed cancelled and not to alienate the suit land illegally and forcibly but, to no effect.

Having been put to notice, defendants appeared and filed their joint 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 entitled for declaration as prayed for?OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP
3. Whether suit is time barred?OPD
4. Whether suit is not maintainable in the present form? OPD
5. Whether plaintiff has no locus standi and cause of action to file the present suit?OPD
6. Whether the plaintiff has concealed material facts from

the Court? OPD

7. Whether the sit is barred under various provisions of law?OPD

8. Relief

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has miserably failed to prove his case. Accordingly, his suit for declaration and permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 27.2.2015. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned District Judge, vide his impugned and decree dated 1.4.2016. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

Relationship between the parties is not in dispute. Plaintiff-appellant was son of defendant No.3. Similarly, defendant No.2 was son of defendant No.1 and defendant No.3. Plaintiff and defendant No.2 were step brothers. Before the instant avoidable litigation started, parties arrived at a compromise. At that point of time, some land owned by Sh. Baldev Singh-father of defendant No.2 was under acquisition. Later on, competent authority of State dropped the acquisition proceedings and the said land was de-notified. At that point of time, since some part of the suit property, in the instant case, was in possession of the plaintiff-appellant, he started asserting his exclusive claim thereon.

It is a matter of record that after de-notification, mutation No. 1970 dated 18.3.2013 came to be recorded in favour of defendant No.3. Defendant No.3 executed power of attorney in favour of his wife-defendant No.1, who, in turn, on the strength of said power of attorney, executed the sale deed in question bearing 599 dated 3.6.2013 in favour of defendant No.2. The abovesaid compromise took place much earlier, i.e. on 27.3.2012. This was the specific and strong reason that suit property could not have been covered under the compromise, because at that point of time, it was under acquisition.

So far as the power of attorney executed in favour of defendant No.1 and execution of sale deed by defendant No.1 in favour of defendant No.2, are concerned, it is also based on record and has gone undisputed. Defendant No.3 never pointed out that he either cancelled or withdrew the power of attorney executed by him in favour of his wife-defendant No.1 at any point of time. Once defendant No.1 was holding a valid power of attorney, she was very much competent to execute the sale deed in question. That is what has been held by both the learned courts below. Having said that, this Court feels no hesitation to conclude that the learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld.

Before arriving at a judicious conclusion, the learned District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in later part of para 7 of its impugned judgment, which deserve to be noticed here, read as under:-

“The suit property was not in the name of the appellant nor in the name of Baldev Singh at the time when the parties entered into compromise, hence, appellant cannot be considered owner of the property on the basis of compromise for the property which was never a part of compromise nor even ownership of respondent no.3 at that time as amply proved from the documentary evidence that earlier the property was acquired by the Government of Punjab and it was later on denotified and was transferred in the name of respondent no.3 along-with his brother as per mutation no.1970 dated 18.03.2013 and only after the sanctioning of mutation respondent no.3 became owner and there is nothing on record to hold that Power of Attorney in favour of respondent no.1 is not valid as respondent no.3 never stated that he has not given any power of attorney. It is only alleged by the appellant that she is not holding a valid power of attorney and on the basis of valid power of attorney she executed the sale deed. So, it has rightly been held by the learned lower Court that property in dispute was neither the subject matter of the earlier suit which was decided/disposed of on the basis of compromise on 03.05.2012 by the Court of Civil Judge(Jr.Divn.), Bathinda and respondent no.3 became owner of the property only on the basis of mutation no.1970 dated 18.03.2013 and the present sale deed has been executed by the Power of Attorney Holder in favour of respondent no.2 thereafter. As far as the factum that appellant has contended that he is in possession and has referred the Photographs placed on record Ex.P5and

Ex.P6 and further has referred Ex.P10 order dated 04.04.2014 passed by Assistant Collector. Both these documents are not sufficient to hold somebody in possession as appellant is neither owner nor has got any concern with the property in dispute. Ownership is admittedly proved to be vest in respondent no.3 and that too after passing of mutation no.1970 on 18.03.2013 and there is not an iota of evidence to prove as to how the appellant came into possession and land is a joint land of respondent no.3 and his brother, same has never been partitioned. So, there is no cogent evidence on the file to prove the factum of exclusive possession. Otherwise also, the learned lower Court has also rightly held that in such like cases injunction cannot be granted against true owner especially in the circumstances when appellant is not able to prove his exclusive possession nor able to prove his capacity. Resultantly, this Court is constrained to hold that there is no illegality or irregularity in the findings as recorded by the learned lower court in dismissing the suit of the plaintiff-appellant. Accordingly, the findings as recorded by the learned lower Court on all the issues stand affirmed.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments 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 a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the

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Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

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 appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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.

19.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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