

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 1478 of 2015

Date of decision : November 07, 2017

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Bharthu

.....Appellant

Versus

Hawa Singh @ Bobal

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. R.N Lohan, Advocate for the appellant.

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RITU BAHRI, J.

Present appeal has been filed by the appellant-defendant no.1 Bharthu against the judgment dated 19.5.2011 passed by the Civil Judge (Junior Division), Hansi, whereby suit filed by respondent no.1-plaintiff, Hawa Singh along with counter claims filed by the defendants was dismissed and the judgment dated 14.11.2014 passed by the Additional District Judge, Hisar, whereby appeals filed by Hawa Singh respondent no.1-plaintiff and Bharthu appellant-defendant no.1 against the judgment and decree dated 19.5.2011 were dismissed.

Brief facts of the case, are that the plaintiff Hawa Singh filed a suit for permanent injunction restraining defendants no. 1 to 3 from interfering in his peaceful possession over the land owned by him bearing

Khasra no. 239//4 min (2-0) and further from demolishing or causing any damage to the Tube well installed in its South Western corner situated at village Singhwa Khas, Sub Tehsil Bass, Tehsil Hansi, District Hisar which was purchased by plaintiff along with the tube well vide registered sale deed dated 10.7.1989 Ex.P-2. As per the plaintiff, he had purchased 2 kanals of land i.e 1/4th share from the total land measuring 8 kanals comprised in khasra no. 239//4 min south in Village Singhwa Khas, Sub Tehsil Bass, Tehsil Hansi, District Hisar along with the tubewell on South West corner with all rights appurtenant thereto from defendants no. 1 & 2 (Sh. Bharthu and Sh. Khazan Singh) vide registered sale deed dated 10.7.1989. He incurred huge expenses to the extent of Rs.1,00,000/- for cultivation of land, installation of submersible Pump and laying down of underground pipe lines till 15 acres of the land away from the tube well in the year 1990 vide jamabandi for the year 2002-03. The defendants were adamant to interfere in the peaceful possession and working of the tube well over his part of land without any right, title or interest to do so. The plaintiff further averred that vide a recital in the sale deed dated 10.7.1989, the vendors had given him an option to install a tube well, anywhere deemed fit for irrigation and agricultural purposes and that now, by way of family settlement and Release deed, the property measuring 68 kanals 8 marlas each was transferred in the names of his two sons namely Sh. Ramesh and Sh. Naresh and mutation no. 219 and 1825 were sanctioned in their favour. The plaintiff resides with his sons (defendants no. 4 and 5) and also deposited a security for electricity connection for the turbewell vide receipt dated 2.6.2008.

On notice, defendants no. 1 to 3 Bharthu, Khazan Singh and

Rajpati widow of Sh. Virender filed written statement, in which they took the stand that no registered sale deed was executed on 10.7.1989 between the parties qua the suit land along with the tube well on the south west side and as such the same is a result of fraud and misrepresentation. In the year 1989, land along with a tube well could not have been sold for a mere sale consideration of Rs.1500/- as value of mere tube well at that time, was not less than Rs.15,000/-. Plaintiff Hawa Singh had approached Sh. Bharthu for lease deed of land bearing khasra no. 239//4 min (2-0) which already had a tube well installed on the northern portion thereof for ten years @ Rs.1500/- per annum. But, when they approached the plaintiff after expiry of ten years of the deed, the plaintiff removed the engine of the tubewell and secretly started installing the same on part of the suit land. The plaintiff fraudulently and in an unlawful manner had got executed a registered sale deed.

The defendants by way of a counter claim sought a declaration that the registered sale deed dated 10.7.1989 was illegal null and void. The defendants further sought a declaration that the land in Khasra no. 239//4 along with a tube well on the northern part had been given by defendants no. 1 & 2 on lease @ 1500/- per annum for ten years and as the tenure of the lease deed has expired, the tubewell was liable to be removed from the south west corner of the land in dispute.

Following issues were framed by the trial Court.

- 1. Whether the plaintiff is owner in possession of the suit property along with tube well allegedly installed at its Southern corner? OPP*
- 2. Whether the plaintiff is entitled for relief of*

injunction as prayed for? OPD

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD

4. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD

5. Whether the suit of the plaintiff is against statute? OPD

6. Whether the plaintiff has not come in the Court with clean hands and suppressed the material facts in the present suit? OPD

7. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD

8. Whether the sale deed Vasika no.1241 registered on 10.7.1989 is against law and facts based on fraud and misrepresentation mere paper transaction and not binding upon the rights of the defendants? OPD

9. Relief.

After hearing counsel for the parties and going through the records of the case, trial Court dismissed the suit of the plaintiff as well as counter claim of the defendants vide judgment dated 19.5.2011.

On appeal, the lower appellate Court examined the entire record again. It was considered that PW-2 Parveen Kumar Jain Deed Writer Hansi stated that his father Sh. Om Parkash Jain was Deed Writer and had died. He had seen original sale deed bearing Vasika no.1241

dated 10.7.1989 which was drafted and signed by his father Sh. Om Parkash Jain. As per his statement, he had seen the attested copy of original sale deed Ex.P-2 which is correct as per original. Plaintiff Hawa Singh while appearing in the witness box as PW-6 deposed about the execution of sale deed bearing Vasika no.1241 dated 10.7.1989 (Ex.P-2) by the defendants no. 1& 2 in his favour. PW-7 Rajesh Kumar Clerk Registrar Office, Hisar deposed that he has brought the original record of sale deed no. 1241 dated 10.7.1989. Ex.P-2 is the correct certified copy of the original sale deed. Ex.P-2 was issued by their office. The defendants in the written statement denied that they executed sale deed bearing Vasika No. 1241 dated 10.7.1989 in favour of the plaintiff but it was not the pleading of the defendants that the aforesaid sale deed does not bear their thumb impression. It was observed by the lower appellate Court that no convincing evidence was placed on record by the defendants to prove that they did not execute the sale deed in favour of the plaintiff. Even the mutation no.2123 dated 19.7.2010 had been entered and sanctioned in favour of the plaintiff on the basis of aforesaid sale deed bearing vasika no.1241 dated 10.7.1989. In Ex.P-2, it was written that the land measuring 2 kanals has been sold along with rights in the tube well but it was also further written in Ex.P-2 that the vendee (plaintiff) would be entitled to install his tube well at any place in the land sold vide said sale deed. Thus the tubewell in question as pleaded by the plaintiff in his plaint was in fact not in existence in the land sold vide sale deed Ex.P2 at the time of execution and registration of said sale deed. Even as per the mutation no.2123 dated 19.7.1990 Ex. P-3 entered and sanctioned on the basis of aforesaid sale deed bearing Vasika no. 1241 dated 10.7.1989, the land was

being cultivated through canal and it is not mentioned in the said mutation that any tube well was in existence at the spot at the time of sanctioning of said mutation. In copy of jamabandi of the land comprised in khasra no.239 Killa no.4(8-0) for the year 2004-05 Ex.-41 also, it has been mentioned that the said land is being cultivated through canal and no tube well has been shown to be in existence on the said land. PW-3 Rajesh Kumar, Meter Reader gave the necessary information with regard to the installation of the tube well connection. Copy of service connection order dated 8.12.2009 Ex.P-40 made it clear that the plaintiff applied for electricity connection for the tube well on 2.6.2008 and the same was installed on 23.1.2010. He further proved the receipt dated 2.6.2008 Ex.D-1 of payment made by the plaintiff and copy of Service Connection Order dated 8.12.2009 Ex.P-40.

Thus, lower appellate Court held that the evidence produced was sufficient to conclude that at the time of execution of the sale deed Ex.P-2, there was no tube well connection on the land and the application for tube well connection was made on 2.6.2008 and the same was installed on 23.1.2010. When the suit was filed by the plaintiff on 29.7.2009, there was no tube well connection on the suit land. It was further held that the defendants, however, did not lead any evidence to prove that the sale deed Ex.P-2 was not executed by defendants no. 1 & 2 in favour of the plaintiff. The defendants have also not led any convincing evidence to prove that any fraud was committed with them by the plaintiff. Hence, the sale deed was held to be validly executed and after that the plaintiff became a co-sharer in the suit land as Ex.P-2 did not mention any specific portion which was sold to the plaintiff. The defendants admitted that the plaintiff

had filed an application for partition bearing no. 36-T of 29.6.2011 for partition of Khasra no.239/4m(8-0) situated in the area of village Singhwa Khass mentioned above which has been decided on 20.3.2014 by Assistant Collector Iind Grade, Sub Tehsil Bass. Appeal against the aforesaid order dated 20.3.2014 was pending before the Commissioner, Hissar. The lower appellate Court came to the conclusion that no order for demolishing the tube well in question is liable to be passed and keeping in view the partition, the parties are entitled to get the possession of the land of their shares in Khasra no.239 including the land wherein tube well-in-question has been installed after its partition as per the order of revenue authorities. Since on the date of the filing of the suit, the tube well had not been installed, and moreover keeping in view that they will be bound by the partition proceedings finalized before the Commissioner, Hissar, the parties will be bound by the orders passed by the Commissioner and the suit of the plaintiff as well as counter claim filed by the defendants has been rightly dismissed by the lower appellate Court.

In view of all that has been discussed above, there is no illegality or infirmity in the orders passed by the Courts below that requires interference of this Court. Hence the same is dismissed.

November 07, 2017

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(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No