

RSA No. 1687 of 2015 (O&M)

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

**RSA No. 1687 of 2015 (O&M)
Date of Decision: 14.7.2017**

Jeet Lal

.....Appellant

Vs.

Smt. Kaushalya and others

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Vinod Bhardwaj, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Plaintiff is in regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for possession and permanent injunction was dismissed by the learned trial court, upholding the validity of sale deed dated 12.2.1969 in favour of the defendants and his first appeal was also dismissed by the learned first appellate court.

Brief facts of the case, as recorded by the learned trial court in para 2 of its impugned judgment, are that plaintiff filed the suit with the averments that he was owner of the suit property shown in site plan by virtue of sale certificate dated 15.5.1967. Husband of defendant No.1 obtained the signatures of the plaintiff on blank papers and prepared a sale deed of land measuring 46 sq. yards 6 feet. That sale deed was challenged by the plaintiff in a separate suit. Defendants No.1 to 5 were in illegal possession of the

RSA No. 1687 of 2015 (O&M)

property subject matter of the aforesaid sale deed. With these averments, a prayer for grant of decree of possession was made. A relief of permanent injunction to restrain defendants No.1 to 5 from alienating the suit property was also made.

Defendants were put to notice. They appeared and filed their contesting written statements, raising more than one preliminary objections. Plaintiff filed his replications to the written statements. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled to a decree for permanent injunction, as prayed for? OPP
- 1-A. Whether the plaintiff is entitled for the relief of possession of the suit property, as prayed for? OPP (framed vide order dated 27.4.2012).
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Whether the suit is not properly valued for the purpose of court fees and jurisdiction? OPD
5. Whether the suit of the plaintiff is bad for non-joinder of necessary parties? OPD
6. Whether the plaintiff has estopped to file the present suit by his own act and conduct? OPD
7. Whether the suit is time barred? OPD
8. Whether the suit liable to be dismissed for non compliance of Order 7 Rule 1 (j) CPC? OPD
9. 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

RSA No. 1687 of 2015 (O&M)

conclusion that plaintiff has failed to prove his case, by leading cogent and convincing evidence. Accordingly, his suit for possession with permanent injunction was dismissed by the learned trial court, vide impugned judgment and decree dated 22.5.2012. Dissatisfied, plaintiff filed his first appeal, which also came to be dismissed by the learned Additional District Judge, vide its impugned judgment and decree dated 4.10.2014. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

The only short issue involved in the instant appeal is, as to whether the learned courts below were well justified, while recording their concurrent findings of facts, holding the sale deed dated 12.2.1969 as a valid document.

It is not in dispute that ancestors of the plaintiff were allotted land, including the suit land and accordingly, sale certificate dated 15.5.1967 was issued, as they were found successful bidders in the public auction. Consequent upon this sale certificate, predecessor-in-interest of the plaintiff became absolute owner of the land, including the suit land. Thereafter, a sale deed dated 12.2.1969 was executed in favour of Juma Ram who was husband of defendant No.1 and predecessor-in-interest of all other defendants. Juma Ram purchased the suit land by way of sale deed, being a bonafide purchaser.

After purchasing the suit land from the predecessor-in-interest of the plaintiff, defendants raised construction and were in actual physical possession of the suit land, as owners thereof. This sale deed was duly proved on record as Ex. DX/1. In spite of the fact that appellant being the plaintiff, onus was on him to prove his pleaded case, he failed to discharge

RSA No. 1687 of 2015 (O&M)

his onus qua this sale deed dated 12.2.1969, which was found to be a genuine sale deed in favour of the defendants. Accordingly, suit of the plaintiff was rightly dismissed by the learned trial court, vide its impugned judgment and decree and the same deserve to be upheld.

Similarly, before arriving at a judicious conclusion, the learned Additional District Judge rightly re-considered and appreciated true facts of the case as well as the evidence available on record and found that findings recorded by the learned trial court were well justified. Cogent findings recorded by the learned first appellate court in para 19 and 20 of its impugned judgment, which deserve to be noticed here, read as under:-

“Arguments advanced by learned counsel for both the sides are duly considered apart from perusing the record. The plaintiff-appellant is claiming the possession of the portion marked with yellow colour in the sit plan Ex.P5. To prove his case, plaintiff-appellant was required to prove his title on the said portion and he was required to prove that defendants No.1 to 5 are in illegal possession. To prove his title, plaintiff-appellant has relied upon the certificate of sale Ex.P1. A perusal of the said certificate reveals that the boundaries of the property, which was purchased by the plaintiff-appellant were, as under:

East: Street

West: Mosque & Ev. Property

North: Bazar and

South: the houses of others.

A perusal of above boundaries reveals that the plaintiff-appellant has purchased the portion, which is shown in green and red colour and not the portion which is mentioned in yellow colour. Later on, the portion depicted in red colour was allegedly sold to the

predecessor in interest to defendants No.1 to 5 name Juma and possession was delivered. The plaintiff-appellant has challenged the sale deed in a separate suit, therefore, that property and sale deed is not in dispute in present matter. In the present matter, the dispute is as regard to the portion depicted in yellow colour only. The plaintiff-appellant has failed to establish his ownership on the same. On the other hand, defendants-respondents No. 1to 5 have well established their ownership by way of conveyance deed Ex.DX/Ex.P7 (alongwith site plan Mark-C) on the portion shown in yellow colour. Therefore, the suit of the plaintiff-appellant was rightly dismissed by the learned trial court. It is wrong to say the learned trial court has considered the property shown with red colour in site plan only as suit property. The learned trial court has returned finding on property shown in yellow colour also treating it, as suit property. Therefore, the judgment decree of the learned trial court is correct and legal and the same deserves to be upheld and the appeal is liable to be dismissed.”

It goes without saying that once the plaintiff-appellant was coming to the court, it was for him to prove his pleaded case, by producing the relevant material on record. Pleadings alone would not be sufficient to decree any suit. Relevant averments taken in the pleadings were supposed to be proved by the plaintiff by producing cogent and convincing evidence before the court. However, in the case in hand, plaintiff-appellant failed to discharge his onus. There was no cogent and sufficient evidence brought on record by him, because of which, his suit was rightly dismissed by the learned courts below vide their respective impugned judgments and decrees and the same deserve to be upheld.

During the course of hearing, learned counsel for the appellant

RSA No. 1687 of 2015 (O&M)

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 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.

14.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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