

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2892 of 2015 (O&M)

Date of decision: 26.09.2017

Gurdial Singh

... Appellant

Vs.

Joginder Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Amit Arora, 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 with consequential relief of permanent injunction and in the alternative for possession as well, was dismissed by the learned trial Court vide its impugned judgment and decree dated 06.03.2013 and his first appeal was also dismissed by the learned first appellate Court vide impugned judgment and decree dated 21.08.2014.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of the impugned judgment, are that plaintiff Gurdial Singh had filed the suit against the defendants for declaration to the effect that plaintiff was owner in possession of the land measuring 45'x50' as described and

detailed in the head note of the plaint and the defendants had no right, title or concern in the suit property with consequential relief of permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiff from the suit land illegally and forcibly except in due course of law or in the alternative suit for possession of the said land. The plaintiff had alleged that Jawala Singh son of Budh Singh was owner in possession of the land within Lal Lakir (Red Line) of Village Jaura, Tarn Taran and said Jawala Singh was grandfather of defendant No.2 Gurdev Singh. It was further pleaded that both the defendants Joginder Singh and Gurdev Singh had been residing adjoining to the suit land. The plaintiff had further pleaded that Jawala Singh had sold the suit land in favour of Sunder Singh vide four sale deeds (unregistered) dated 14.01.1945 for consideration of Rs.99/- each. The plaintiff had further pleaded that sale deeds were executed by Jawala Singh in favour of Sunder Singh regarding the said land in the presence of Ujjagar Singh son of Mohinder Singh and Rango son of Buta Marasi, who had thumb-marked the same as attesting witnesses. It was further pleaded that sale deeds were scribed by Buta Ram Brahman, documents writer of Village Jaura. It was further pleaded that all the four sale deeds had been entered in the register of documents writer at serial Nos.86, 87, 88 and 89. The plaintiff had further pleaded that possession of the suit land was delivered in favour of Sunder Singh at the time of execution of sale deeds and said Sunder Singh remained in possession of the suit land during his life time. It was further pleaded that Sunder Singh had died and after his death, Harnam Singh son of Sunder Singh came into possession of the suit land. It was further pleaded that plaintiff Gurdial Singh was son of Harnam Singh, who had also died, due to which

plaintiff became owner in possession of the suit land. It was further pleaded that plaintiff had title and right qua the suit property being inherited from his forefathers. It was further pleaded that plaintiff was aged about 65 years and he was rickshaw puller by profession. It was further pleaded that plaintiff had residential house at Tarn Taran and he had constructed a temporary shed, a latrine cum bathroom and a room for his personal use in the suit property. The plaintiff had further pleaded that by taking the advantage of the absence of the plaintiff, the defendants had occupied the suit land by tethering the cattle and by keeping dung cakes in the suit property. It was further pleaded that defendants had no right, title or interest in the suit property, but they had threatened to dispossess the plaintiff illegally and forcibly from the suit land. It was further pleaded that if the plaintiff was not in a position to prove his possession in the suit land, then the plaintiff was entitled for the relief of possession of the suit land in the alternative. The plaintiff had further pleaded that he had requested the defendants not to take law into their own hands, but the defendants were adamant in their threat and they had refused to admit the claim of the plaintiff, which had given rise to the cause of action.

Defendants were put to notice. Despite service, defendant No.1 did not appear and he was proceeded against ex-parte by the learned trial Court vide its order dated 20.01.2011. However, defendant No.2 appeared and filed his contesting written statement, raising more than one preliminary objections. It was specifically pleaded by defendant No.2 that he was in actual and physical possession over the suit land from the time of his ancestors. Plaintiff-appellant did not file any replication. On completion of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether the plaintiff is owner in possession of the suit land? OPP
2. If issue No.1 is proved, whether the plaintiff is entitled to perpetual injunction restraining the defendants from interfering into his peaceful possession over the suit land? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff is guilty of suppressing the true facts? OPD
5. Whether the plaintiff has no locus standi to file the present suit?
OPD
6. Relief.

Both the parties brought on record 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 plaintiff has miserably failed to prove his case either for a decree for declaration or permanent injunction. Neither the plaintiff could prove his documents of title nor he could prove his possession over the suit land.

On the other hand, defendants were found in physical possession and the electricity bills were in favour of the defendants qua the suit land. Accordingly, the learned trial Court dismissed the suit of the plaintiff-appellant vide its impugned judgment and decree dated 06.03.2013. Plaintiff felt aggrieved and filed his first appeal, but the same was also dismissed by the learned first appellate Court vide its impugned judgment and decree dated 21.08.2014. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

Entire case of the plaintiff-appellant was revolving around four documents, which were being claimed by the plaintiff as unregistered sale deeds dated 14.01.1945. These unregistered sale deeds are Ex.P1 to Ex.P4. A bare perusal of these documents would show that predecessor-in-interest of the plaintiff-appellant sought to purchase the suit land for an amount of Rs.99/- from late Sh. Jwala Singh, grandfather of defendant-respondent No.2. An amount of Rs.60/- is claimed to have been paid and the remaining amount of Rs.39/- was to be paid later on. However, neither the plaintiff-appellant could prove that the remaining amount of Rs.39/- was ever paid to the predecessor-in-interest of defendant No.2 nor he could prove his possession over the suit land. 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.

Before arriving at its judicious conclusion, 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 para 10 of the impugned judgment, which deserve to be noticed here, read as under: -

“Keeping in view the arguments advanced by both the counsels for the parties and from the perusal of evidence, documents and record pertaining to the present case, I am of the opinion that appellant has come to the court to seek the relief of declaration on the basis of four sale deeds dt. 14.01.1945.

First of all, the appellant has not produced the true attested translation of all these sale deeds nor any witness has been

examined to prove the fact that translation has been rightly made by the person who knows both of the languages i.e. Urdu and Punjabi.

Secondly, from the perusal of copies of translation of the sale deeds so produced, it is clear that entire sale consideration amount has not been paid by the purchaser of the suit land. It is mentioned in the sale deeds that only Rs.60/- cash was paid qua the mortgage of the land and remaining Rs.39/- were required to be adjusted later on.

In these circumstances, Sunder Singh, the so called vendor cannot be deemed as valid purchaser of the suit land. It has been rightly observed by the learned lower court that the vendor or buyer cannot mortgage or sell the said land when the remaining sale consideration amount was yet to be paid. The appellant has filed the suit for declaration and permanent injunction by claiming his possession and he has also claimed the relief of possession by considering the fact that suit land is under occupation of the respondents. The respondents have specifically pleaded that they are in possession of the suit land being one of the co-sharers of Jawala Singh. The appellant has not been able to prove his possession in the suit property by way of oral and documentary evidence and PW1 Gurdial Singh has stated in his cross-examination that he used to go to village Jaura after the intervals of two or three months. The appellant does not know even the name of Sarpanch of village Jaura. The respondents have

examined DW2 Budh Singh, who is Sarpanch of the village and has stated on oath that respondents are in possession of the suit land. The respondent No.2 has produced the electricity bills qua the electricity connection installed in the suit land; whereas appellant has not been able to prove any document regarding his possession in the suit land. The appellant has not been able to prove even the possession of his predecessors-in-interest in the suit land. As such, the appellant has not been able to prove the contentions pleaded by him before the lower court. The appellant has not been able to give any cogent and convincing reason as to why the findings of learned lower court as regards issue Nos.1 and 2 are not sustainable in the eyes of law, when these findings have been rightly returned in favour of the respondents after appreciation of oral and documentary evidence led by both the parties. The appellant has not been able to point out any illegality and any infirmity in the impugned judgment and decree, due to which, the judgment and decree do not call for any interference of this court and appeal filed by the appellant being without merit is liable to be dismissed.”

The appellant being the plaintiff, onus was on him to prove his pleaded case by bringing on record cogent and convincing evidence. However, the appellant failed to do so. Neither he could prove documents Ex.P1 to Ex.P4 to be the valid documents of title nor he could prove his possession over the suit land. In fact, the very fact that the plaintiff also sought an alternative relief for possession, would show that he was not in possession over the suit land at any

point of time. It is also a matter of record that the plaintiff-appellant was residing and working at Tarn Taran.

Benefit of presumption attached to Ex.P1 to Ex.P4 being 30 years old documents, as per Section 90 of the Indian Evidence Act ('the Act' for short) could have been granted to the appellant, only if he would have been able to prove that the remaining amount of Rs.39/- was also paid by his predecessor-in-interest to the predecessor-in-interest of defendant No.2. However, it had never been the pleaded or argued case on behalf of the appellant that the remaining amount of Rs.39/- was also paid. Under these circumstances, the appellant would not be entitled for the benefit of provisions of law contained in Section 90 of the Act, thus, the impugned judgments and decrees deserve to be upheld, for this reason also.

A bare combined reading of both the impugned judgments and decrees passed by the learned Courts below will make it crystal clear that firstly the learned trial Court and later on the learned first appellate Court considered each and every relevant aspect of the matter, before recording their concurrent findings of facts, which have been found based on sound reasons. In the peculiar fact situation obtaining on record of the case in hand, no fault can be found with the concurrent findings of facts recorded by both the learned Courts below and the impugned judgments and decrees deserve to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also failed to 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 either of 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

26.09.2017
vishnu

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