

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A. No. 4653 of 2015 (O&M)

Date of Decision: 11.10.2017

Harbhajan Singh

.....Appellant

Versus

Smt. Surinder Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

AVNEESH JHINGAN, J.

The defendant is in Regular Second Appeal aggrieved against the judgments and decrees passed by the lower Courts below, whereby the suit for declaration and permanent injunction filed by the respondent-plaintiff was decreed and the counter claim filed by the appellant-defendant was dismissed.

The respondent-plaintiff filed a suit for declaration declaring herself to be owner in possession of property bearing Kothi No. 567 having dimension of 56' in length and 29' in width built on total area of 180.4 square yards in the area of Nangli Abadi Akash Avenue, Tehsil and District Amritsar. The consequential relief of permanent injunction restraining the defendant from interfering into the peaceful possession of the plaintiff or making any type of damage to the property otherwise than in due course of law, was also sought.

It was averred that Sardar Parshotam Singh, husband of the plaintiff, purchased the said plot vide sale deed dated 21.7.2003 which was registered in the Sub-Registrar Office. It was further averred that he being

Manager in Punjab State Co-operative Bank Limited had taken a loan of ₹ 3.75 lacs for construction of the building. The said loan was re-paid and No Objection Certificate dated 11.11.2009 was issued by the Bank. The said property was gifted to the plaintiff by her husband vide duly registered gift deed dated 3.12.2009. The mutation was duly sanctioned in the name of the plaintiff vide mutation No. 20080 and the same was entered at the back side of the gift deed. Since the brother of husband of the plaintiff who was Ex-Sarpanch of village Butt Tehsil and District Amristar was threatening to demolish the iron gates of the Kothi and was not considering the plaintiff as an owner, therefore, the suit was filed.

Upon notice appellant-defendant filed the written statement and also filed a counter claim for recovery of ₹ 18,300/-. It was claimed that the plaintiff took a loan of ₹ 15,000/- from the defendant on interest at the rate of 12% per annum.

The defendant after filing the written statement never appeared before the Trial Court and was proceeded exparte. The plaintiff, in order to prove her claim, examined PW1-Mehnga Singh and PW2 Dalbir Singh who deposed that they were witnesses to the gift deed dated 3.12.2009 executed by Sardar Parshotam Singh in favour of his wife Surinder Kaur. PW3-Meenakshi Chauhan, who was appointed as Local Commissioner also deposed in favour of the report submitted by her as Ex.P4. PW4-Akashay Kumar, Deed Writer, has deposed that the gift deed was scribed by him at the instance of Sardar Parshotam Singh in favour of his wife and the same is entered in his deed writer register at Sr. No.199. PW5-Rohit Gupta working as Draftsman also deposed that he prepared the site plan Ex.P5.

Ex.PA (sale deed dated 21.7.2003) was also produced to show that husband

of the plaintiff purchased the property in question from one Charanjeev Singh. Gift deed was produced as Ex.P1.

The appellant/defendant, after filing the written statement and counter claim, never appeared before the Trial Court and led no evidence or witness.

The trial Court decreed the suit of the plaintiff declaring her to be owner in possession of the suit property and restraining the defendant from interfering into the peaceful possession of the plaintiff and not to make any type of damages to the suit property.

The counter claim of the defendant was dismissed.

Aggrieved of the said judgment and decree, an appeal was filed by the appellant/defendant which was dismissed by learned Additional District Judge, Amritsar, on 19.5.2015.

Now the Regular Second Appeal has been filed by the aggrieved appellant-defendant and only one question has been raised.

" Whether the impugned judgments and decrees passed by both the Courts below are against the spirit of principles of natural justice, equity and fair play?"

A reading of the question framed will show that it is not a question of law much less substantial question of law.

The ownership and possession was duly proved by the plaintiff. No doubt was raised about the gift deed. The appellant-defendant, after filing the written statement and the counter claim, opted not to defend the suit. The evidence and witnesses produced by the plaintiff clinched the entire issue in her favour. No adverse material was there. In such circumstance, there is no fault in the findings recorded by the learned lower Court.

So far as the counter claim filed by the appellant/defendant was concerned, the same was not substantiated by any evidence. There was no proof produced in support of the plea that a loan of ₹ 15,000/- was advanced to the plaintiff. In such circumstance, there was no option with the learned lower Courts except to dismiss the same.

Now in the regular second appeal the grievance put forth by the appellant-defendant is that the orders of the lower Courts are against the principle of natural justice and fair play. Such an argument is not available to the appellant-defendant. He was given due opportunity and on availing the said opportunity not only he filed the written statement but also lodged counter claim. Thereafter, he opted not to appear before the Court and was proceeded ex parte. The order to proceed ex-parte was not challenged by the appellant-defendant.

So far as the documents regarding ownership of the plaintiff are concerned, the gift deed was duly supported by deposition of the witnesses to the deed. The mutation has been duly sanctioned. Above all, gift deed was registered document as per Section 17 of the Registration Act, 1908. Other witnesses have also supported the said claim.

In such circumstance, no fault can be attributed to the suit being decreed by the lower Courts declaring the plaintiff as owner in possession.

The First Appellate Court arrived at a judicious conclusion after re-considering and re-appreciating the facts of the case as well as the evidence available on record in its right perspective. The cogent and well convincing findings recorded by the learned First Appellate Authority deserve to be accepted.

No other issue has been raised.

Moreover, during the course of hearing, learned counsel for the appellant could not point out any illegality or perversity in the impugned judgments and decrees 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 regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

The findings recorded by the First Appellate Court as well as the trial court have been found factuaslly correct and legally justified. Thus, no fault can be found in the impugned judgments and decrees passed by the Courts below and the same deserve to be upheld.

No ground for interference has been made out.

Resultantly, with the above-said observations made, the instant regular second appeal stands dismissed, however, with no orders as to costs.

11.10.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No