

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6053 of 2014 (O&M)
Date of Decision: 18.7.2017

Chander Singh

... Appellant

Versus

Senapati Dhingra

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Chanderhas Yadav, Advocate for the appellant

RAJIV NARAIN RAINA, J. (Oral)

1. The prayer for declaration and injunction in the suit has rightly been declined by the learned Additional District Judge, Jhajjar in his judgment and decree dated 27th August, 2014 for the reason that no evidence was led to prove title of the suit property. The claim is based on a slim piece of evidence exhibited on record as D-1 which were two receipts allegedly showing the sale consideration between the plaintiff and the defendant for a sum of ₹ 20,000/- and ₹ 10,000/- respectively. The plaintiff had failed to tender the two receipts in original before the court below and it was only upon the order passed in revision by this Court that permission was granted to call for the receipts. The defendant produced one receipt in a sum of ₹ 20,000/-. The defendant's case was that money had passed, but it was returned closing the deal.

2. The court below has refused to issue injunction, besides declining decree of declaration. Plaintiff claimed to be in possession of the receipts. Since the plaintiff failed to prove his right to the suit property, the courts below have returned findings of fact against the plaintiff and dismissed the suit. The courts below have recorded findings of fact concurrently on both the major prayers which are not open to be disturbed in Regular Second

Appeal. The receipt is said to be dated 22nd December, 1989 and at best, it could have been treated as agreement to sell for which a suit for specific performance ought to have been brought. Instead, the plaintiff filed the suit in 2006 based on title, when none had passed on by the simple receipt to support transfer of suit property. The trial court qua declaration held that the suit was time barred. The first appellate court has not gone into that aspect, and therefore, there was no occasion for him to opine on limitation since the suit on the whole deserved to be dismissed on the totality of facts.

3. On the basis of the lack of evidence and materials on record justifying a decree in favour of the plaintiff, it is not possible for this Court to interfere with the findings of fact recorded by the courts below. The judgments and decrees of the courts below do not suffer from any illegality, irregularity or perversity nor the same can be said to be tainted with any error apparent on the face of record so as to require interference by this Court in an appellate decree. No question of law, much less a substantial one, arises for consideration in this appeal.

4. For the foregoing reasons, this appeal is held to be without substance and is dismissed. However, it will be open for the plaintiff to deal with the rights, if any, of possession including claim of adverse possession.

18.7.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No