

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.922 of 2017 (O & M)

Date of decision :04.08.2017

Ali Mohammad

...Appellant

Versus

Gaffar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Afjal Hussain, Advocate for the appellant.

ANIL KSHETARPAL, J.

CM No.2062-C-2017

Allowed as prayed for.

RSA No.922 of 2017

Plaintiff is in Regular Second Appeal against concurrent findings of fact arrived at by the Courts below.

Plaintiff has filed a suit for permanent injunction claiming that he is owner in possession of plot in question for the last 100 years. He claims that the plot is situated within '*Abadi Deh*' of village Maroda, Tehsil Nuh, District Mewat. It was asserted that the defendants have no concern with the suit land.

Defendant contested the suit and pleaded that wife of defendant No.1 had purchased some portion of the land through a registered sale deed dated 24.07.2014.

After appreciating the evidence brought on record, the learned trial court recorded the findings that the appellant has failed to prove his case. Learned trial court further recorded that the plaintiff has neither been able to prove his ownership nor his possession. Even the plaintiff when appeared in the witness-box could not tell what is on the northern side of the plot.

Appeal filed by the plaintiff was ordered to be dismissed, after re-appreciating the evidence available on the file.

Learned counsel for the appellant has submitted that the property is

situated within 'Abadi Deh', therefore, there cannot be any document of title. He has further submitted that the defendant has not proved the title of vendor, who had executed the sale deed. Therefore, it is asserted that the title in favour of wife of defendant No.1 is also not established.

I have considered the submissions made by the learned counsel for the appellant.

Plaintiff had come to the Court with the prayer for passing a decree of permanent injunction. Onus heavily lay upon the plaintiff to prove his case. In this case, plaintiff could not produce any evidence of his ownership and his long possession. Therefore, there is no force in the submission made by learned counsel for the appellant. Plaintiff has to stand on his own legs, even if the property was within *Abadi*. Plaintiff should have produced some evidence to prove his long possession. Plaintiff examined himself as his own witness. Apart from that appellant only examined two witnesses, who had prepared the lay out plan and a photographer. None of the neighbours has been examined. No witness was examined from the Gram Panchayat, to establish that the appellant was in continuous possession of the property.

Second submission of learned counsel for the appellant is that since the title of the vendor of sale deed dated 24.07.2014 has not been proved, therefore, the defendant has failed to prove his right, title or interest in the property.

I have examined the aforesaid submissions. The suit was only for permanent injunction. The Court had framed issues which are extracted as under:-

“1. Whether the plaintiff is entitled for decree of permanent injunction, restraining the defendants from making any sort of interference into the peaceful possession and ownership of the plaintiff over the suit property?OPP

2. Whether the plaintiff is entitled for decree of

mandatory injunction directing the defendants to remove the said construction over the suit land?OPP

3. Whether the present suit is not maintainable?OPP

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

5. Whether the plaintiff has not approached the court with clean hand as plaintiff has concealed the true and material facts?OPD

6. Whether the plaintiff is bad for non-joinder and mis-joinder for necessary parties?OPD

7. Relief.”

A reading of the issues show that there was no issue with regard to ownership of defendant and the Court has simply dismissed the appeal filed by the plaintiff. In injunction suit, normally the Court does not decide ownership unless there is a specific issue to that effect and parties lead the evidence to that effect.

In view of what has been stated above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Accordingly, the appeal is dismissed.

04-08-2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No