

459

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4295-1999 (O&M)
Date of decision : 05.04.2018

Mukhtiar Singh

... Appellant(s)

Versus

Satpal Singh

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harpinder Singh, Advocate for
Mr. Sandeep Punchhi, Advocate
for the appellant.

Ms. Kanishka Goyal, Advocate for
Mr. Sanjeev Sharma, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is against the judgment and decree dated 28.09.1999 rendered by the lower Appellate Court, whereby the appeal preferred by the defendant against the judgment and decree dated 30.04.1998 decreeing the suit of the appellant-plaintiff, has been set aside.

The facts as enumerated from the pleadings of the parties are that the appellant-plaintiff instituted the suit for possession of residential house No.C-24/61 situated in Mohalla Dollianwala, Ferozepur City near Shimla Talkies and recovery of ₹36,000/- @ ₹1,000/- per mensem for the period November 1992 to October 1995 as damages, on the premise that he had purchased the suit property vide registered sale deed dated 07.03.1975 and started living in the house. Since the plaintiff was employed in Punjab

Police and during the period of terrorism, shifted his residence to some other place. In the absence of the plaintiff, the defendant illegally and unauthorized had taken the possession and in that aspect of the matter, damages had been sought along with the possession.

The aforementioned suit was contested by the defendant by taking all preliminary pleas of maintainability, payment of court fee and on merits, it was averred that the plaintiff had not paid any consideration to Agyawanti and he manipulated a false story as he was very close to her. The sale deed executed by Agyawanti was a result of fraud as she, never, during her life executed any sale deed. The possession of defendant had been since many years, therefore, the plaintiff did not have any right to get the premises vacated.

The trial Court on the basis of the pleadings of the parties framed the following issues:-

1. *Whether the plaintiff is entitled to the possession of the suit land as prayed for? OPP*
2. *Whether the plaintiff is owner of the site in dispute? OPP*
3. *Whether the plaintiff is entitled to recover the suit amount as prayed for in the heading of the plaint? OPP*
4. *Whether the suit is not maintainable in the present form? OPD*
5. *Relief.*

The plaintiff in support of the pleadings examined PW-1 Karnail Singh and PW-2 Krishan Lal besides his own statement as PW-3, whereas defendant examined DW-1 Jagdish Parshad and defendant himself

as DW-2.

On the basis of the preponderance of evidence, the trial Court decreed the suit. However, the appeal preferred before the lower Appellate Court had been allowed by setting aside the judgment and decree dated 30.04.1998 as the sale deed revealed that the plaintiff had purchased only 1/4th share in the house along with the others and therefore, the remedy was to seek the partition and not possession, for, the sale deed did not mention about the same.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law, for, it has been proved on record that the plaintiff was owner of the house, in dispute and entitled to the possession of the property. The sale deed being a registered document carries a presumption of truth. The well reasoned judgment and decree of the trial Court has been set aside without assigning reasons. The plaintiff has been able to prove on record his ownership by virtue of the registered sale document. The lower Appellate Court has wrongly held that the plaintiff had purchased 1/4th share of the house and thus, the suit was not maintainable. No such objection was taken by the respondent-defendant qua maintainability of the suit. The sale deed revealed that Agyawanti had 1/4th share, which had been purchased by the appellant-plaintiff, therefore, was entitled to the possession of the property. The defendant failed to prove any jointness of the property, thus, urges this Court for setting aside the judgment and decree, under challenge.

Per contra, learned counsel appearing on behalf of the

respondent-defendant submitted that the judgment and decree of the lower Appellate Court is perfectly legal and justified being the last Court of fact and law as the same is based upon the appreciation of oral and documentary evidence, therefore, urges this Court for upholding the same.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Harpinder Singh, for, admittedly the plaintiff was tenant in the house, in dispute, therefore, was in a position to persuade Agyawanti as performer. Be that as it may, the sale deed reflects that he had purchased 1/4th share, in essence, he was owner along with the co-sharer. The remedy for the appellant-plaintiff, if he had become owner to the extent of 1/4th share purchased from Agyawanti, was to seek the separate possession by way of partition, but not in the manner and mode i.e. claiming exclusive possession, even the possession in the house had not been proved. The onus, in my view, as per the provisions of Section 101 of the Indian Evidence, had not been discharged. The assessment register brought on record for the year 1975-76 to 1993 showed that the property was in the name of Jagan Nath. It had three rooms and was in occupation of owner. The defendant could not have assailed the sale deed in the absence of any counter-claim, but the fact of the matter is that the suit, as framed above, was not maintainable and the remedy lied elsewhere.

Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate court being the last Court of fact and law as the same is based upon the appreciation of oral and documentary evidence, much

less, no substantial question of law arises for determination, accordingly, the present regular second appeal is dismissed.

Original records of the Courts below be sent back.

05.04.2018 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No