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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1344-2013 (O&M)
Date of decision : 28.05.2018

Harish Kumar

... Appellant(s)

Versus

Madan Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.R. Takkar, Advocate
for the appellant.

Mr. Amit Jain, Advocate
for respondent No.1.

Mr. Ramendra Chauhan, Advocate
for respondent No.2.

AMIT RAWAL, J. (ORAL)

The appellant-defendant No.2 has not been successful in defending the suit filed by the respondent No.1-plaintiff/Madan Singh laying challenge to the sale deeds dated 27.08.1997, 14.08.1997 and 29.08.1997, allegedly executed by defendant No.1-Arjun Singh in his favour.

Respondent No.1/plaintiff instituted the aforementioned suit on the premise that the land measuring 18 kanals 8 marlas was purchased by him from defendant No.1-Arjun Singh vide registered sale deed dated 21.03.1989 for a valuable consideration of ₹1,38,000/-. However, Arjun Singh without having any right and title in the property, vide aforementioned sale deeds *ibid*, transferred the alleged rights in favour of

appellant-defendant No.2, thus, the filed the suit in the year 1997.

The defendants contested the suit by filing the separate written statements. Arjun Singh categorically stated that he did not execute the sale deed dated 21.03.1989 in favour of respondent No.1-plaintiff nor received the alleged sale consideration. In fact, the alleged sale deed was a forged and fabricated document, whereas defendant No.2 averred that he was a *bona fide* purchaser for a valuable consideration, for, the revenue record did not reflect the entry of sale deed *ibid* in favour of respondent No.1-plaintiff, therefore, was entitled to take the benefit of provisions of Section 41 of the Transfer of Property Act.

Since the parties are at variance, the trial Court framed the following issues:-

1. *Whether the defendant No.1 executed a registered sale deed dated 21.03.1989 in favour of the plaintiff? OPP*
2. *Whether the possession of the suit land has been delivered to the plaintiff? OPP*
3. *Whether the plaintiff is entitled to decree for declaration as prayed for? OPP*
- 3A. *Whether the defendant No.2 is entitled for the decree of permanent injunction against the plaintiff as alleged in the counter-claim? OPD (C.C.)*
- 4 *Whether the plaintiff is entitled to decree for permanent injunction as prayed for? OPP*
5. *Whether the suit of the plaintiff is not maintainable? OPD*
6. *Whether the suit is bad for non-joinder and mis-joinder of the necessary parties? OPD*
7. *Relief.*

Respondent No.1-plaintiff examined three witnesses and

brought on record various documents (Ex.P1 to Ex.P24), whereas on the

other hand, the defendants examined two witnesses and tendered in evidence certain documents (Ex.D1 to ExD6).

The trial Court on the basis of the evidence both oral and documentary decreed the suit and the appeal laid before the lower Appellate Court on behalf of appellant-defendant No.2 affirmed the judgment and decree of the trial Court.

Learned counsel appearing on behalf of the appellant-defendant No.2 submitted that there was an emphatical denial of execution and registration, much less, receipt of sale consideration viz-a-viz sale deed dated 21.03.1989. The other attesting witness, namely, Gulzari Lal, Lambardar, who allegedly identified the witness, had died, but Ashok Kumar, the attesting witness, did not prove the execution of the Will. PW-1 Arvind Kumar, when appeared in cross-examination, stated that he did not identify Arjun Singh, even Arjun Singh in cross-examination denied the execution of the sale deed. In view of such denial, the onus was upon the plaintiff to discharge by proving the signatures of Arjun Singh. Having failed to avail the services of any Expert, the suit was liable to be dismissed. Before the lower Appellate Court, an application for additional evidence for taking the assistance of an Expert for examination of the signatures and thumb-impressions on the sale deed viz-a-viz admitted signatures of Arjun Singh was submitted, but the same, vide order dated 06.02.2013, has erroneously been dismissed, though in the memorandum of appeal, it was alleged that the aforementioned application remained undecided. The aforementioned order can always be assailed by taking the aid of Order 43 Rule 1A CPC, thus, urges this Court for setting aside the concurrent findings by allowing the application for additional evidence so that chaff is

removed from the grain.

On the other hand, learned counsel appearing on behalf of respondent Nos.1 and 2, submitted that the concurrent findings of fact and law does not call for interference as there is no gross illegality and perversity. It is too late in a day to permit the application for additional evidence as Arjun Singh did not lead any evidence to belie the averments made in the plaint or in support of the averments in the written statement. The appeal was only filed by defendant No.2/appellant, whereas Arjun Singh did not avail the remedy, in essence, reconciled with the factual aspects, thus, urge this Court for dismissal of the present regular second appeal.

In rebuttal, Mr. Takkar, submits that Arjun Singh had lodged an FIR against Madan Singh/plaintiff, but Madan Singh has been acquitted.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Thakkar, for, though in cross-examination, Ashok Kumar stated that he did not identify Arjun Singh at the time of execution and registration of the sale deed, but on a specific question in the cross-examination, it was stated that Arjun Singh was identified by Gulzari Lal-Lambardar. One line here and there in the cross-examination cannot be read for the purpose of adjudication of the appeal, for, the tenor and mode of the entire examination and cross-examination has to be read as a whole. Arjun Singh, in cross-examination, simply denied all the suggestions viz-a-viz the execution and registration and passing of sale consideration. It was obligatory and incumbent upon the defendant-Arjun Singh to belie his signatures and thumb-impressions from the aforementioned certified sale deeds. No doubt

he had taken the steps for initiation of criminal proceedings, though the plaintiff had acquitted. Even otherwise, if the plaintiff had been convicted, the judgment and decree of the criminal court does not bind the civil court as the suit has to be decided on the preponderance of the evidence. Be that as it may, Arjun Singh failed to even assail the findings of fact and law arrived at by the trial Court. Appellant-defendant No.2 cannot drive better title than what he had, for, on the date of execution of the sale deed, he was divested of the ownership and title. In such circumstances, the sale deeds, aforementioned, were wholly illegal, null and void. This is the import of the judgments and decrees, impugned. In my view, the defendant miserably failed to discharge the onus in terms of the specific averments made in the written statement.

As an upshot of my observations, I do not find any illegality and perversity in the concurrent findings of fact and law or involvement of any substantial question of law. No ground is made out for interference. Accordingly, the present regular second appeal is dismissed.

28.05.2018

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**Whether speaking/reasoned **Yes/ No**Whether Reportable **Yes/ No**