

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-1673-2013(O&M)

Date of decision:-20.12.2018

Rajinder Singh

...Appellant

Versus

Jagran Agent Private Limited and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.V.B. Aggarwal, Advocate
for the appellant.

Mr.Hemant Bassi, Advocate
for the respondents.

H.S. MADAAN, J.

Plaintiff Rajinder Singh had brought a suit against Jagran Agent Private Limited, New Delhi through its Managing Director/Shri Rakesh Kumar and Ajmer Singh for declaration with joint possession with permanent injunction on the averments that the suit land measuring 25 kanals 15 marlas was ancestral coparcenary property of the plaintiff, however, Sh.Ajmer Singh had allegedly sold the suit land to defendant No.1 Jagran Agent Private Limited, New Delhi vide impugned sale deed No.8632/1 dated 2.12.2005 for a sum of Rs.25,75,000/-; that mutation has since been sanctioned on the basis of that transaction. According to the plaintiff, the impugned sale deed executed by his father arrayed as defendant No.2 in the suit in favour of defendant No.1 Jagran Agent Pvt. Ltd., New Delhi as well as mutation sanctioned on the basis of thereof are illegal, null, void, inoperative for the reason that defendant No.2 father of

the plaintiff had no legal necessity to alienate the suit land; that the sale deed is without consideration; that the market value of land was more than Rs.50 lacs per acre but in the impugned sale deed amount shown is very less; that defendant No.2 was not the exclusive and absolute owner in possession of the suit land, which had nature of ancestral coparcenary property qua plaintiff and defendant No.2 etc. According to the plaintiff, when defendant No.1 tried to alienate the suit property by converting it into plots and changing its nature, feeling threatened the plaintiff brought the suit in question.

On notice, defendant No.1 appeared and filed written statement taking various preliminary objections challenging the maintainability of the suit, locus standi of the plaintiff to file the suit, cause of action having not arisen to the plaintiff to bring the suit etc. On merits, such defendant submitted that neither the suit land is ancestral nor coparcenary property of the plaintiff; that the plaintiff had got no concern with it; that the sale deed was executed by defendant No.2 for legal necessity being karta of the family and it was an act of good conduct on his part; that the sale deed in question is legal and valid and plaintiff is no body to challenge its legality or validity; that defendant No.2 being exclusive owner in possession was competent to execute the sale deed; that the possession has been handed over to the answering defendant and out of greed due to rise in price, the plaintiff in collusion with his father defendant No.2 has filed the present suit. In the end, such defendant prayed for dismissal of the suit.

Notice of the suit was issued to defendant No.2, who was

duly served but did not appear. As such, he was proceeded against ex-parte on 14.2.2008.

Replication was not filed. On the pleadings of the parties, following issues were framed vide order dated 27.4.2009:

1. Whether the plaintiff is entitled to a decree for declaration that impugned sale deed No.8632/1 dated 2.12.2005 and revenue record passed there upon are illegal, null and void on the grounds mentioned in the plaint? OPP.
2. Whether the plaintiff is entitled to a decree for joint possession with permanent injunction restraining the defendant no.1 from alienating etc. the suit land forcibly and illegally?
3. Whether the plaintiff has no cause of action and locus standi to file and maintain the present suit? OPD.
4. Whether this Court has got no jurisdiction to entertain and try the present suit? OPD.
5. Whether the suit is not maintainable? OPD.
6. Relief.

Thereafter, the case was fixed for plaintiff evidence. However, the plaintiff failed to conclude its evidence despite availing of several opportunities. As such, the evidence of the plaintiff was closed by order of the Court dated 1.6.2011. Defendant No.1 did not wish to lead any evidence.

After hearing arguments, the trial Court dismissed the suit vide judgment dated 1.6.2011.

Feeling aggrieved by the said judgment, the plaintiff had filed

an appeal in the Court of District Judge, Kurukshetra, which was also dismissed vide judgment dated 28.8.2012 passed by learned Additional District Judge, Kurukshetra.

Being dissatisfied with the judgments passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted and the impugned judgments passed by the Courts below be set aside.

On getting notice of regular second appeal, the respondents have appeared before this Court through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the appellant has argued that the judgments passed by the Courts below be set set aside and the case be remanded to the trial Court with a direction to allow the plaintiff to lead evidence. He has referred to authority **Chandan Singh Kang (Deceased) Versus Gurdial Singh and Ors., 1988(2) RRR 282** wherein dealing with a case where the evidence of the plaintiff had been closed under Order 17 Rule 3 CPC, when attorney of plaintiff had fallen ill and was operated upon, in that way confined to bed, it was observed that Court below should not have been so harsh in closing the evidence and plaintiff was permitted to lead evidence.

However, I am not convinced by such contention of learned counsel for the appellant. The facts of the authority were different. The attorney of plaintiff had fallen ill, was operated upon and was confined to bed and advised bed rest. No such document that it was so in the present

is available on record. The plaintiff had availed of many opportunities earlier to lead evidence but had failed to do so. Therefore, this authority does not help the case of appellant/plaintiff in any manner.

Learned counsel for the respondents had pressed into service authority *Shiv Cotex Versus Tirgun Auto Plast Private Limited and others (2011) 9 Supreme Court Cases 678* wherein discussing the proper mode of disposal of regular second appeal under Section 100 CPC, it was observed that formulation of substantial question of law is a must before hearing and disposal of second appeal and interference with concurrent judgment and decree of Courts below by High Court without formulating any substantial question of law vitiated its decision. Neither any substantial question of law has been formulated by this Court nor the same is found to be involved in the present case. It is a simple case of the trial Court closing evidence of the plaintiff on his failure to produce the same despite being given reasonable opportunities.

A perusal of the record goes to show that the appellant/plaintiff in the grounds of appeal itself has contended that issues were framed on 27.4.2009 and case was adjourned for 28.5.2009 for evidence of the plaintiff, however no PW was present and the case was adjourned to 12.8.2009; that no evidence was examined on that date; the case had been transferred to some other Court and it was adjourned to 8.10.2009 and no evidence of plaintiff was present on that date; that an application for amendment of plaint was submitted, which was decided on 3.5.2011 and for evidence of the plaintiff case was adjourned to 30.5.2011; that no evidence of plaintiff was present on that date; that

counsel for the plaintiff was sick and the case was adjourned to 1.6.2011; that no evidence of the plaintiff was present on that date. As such, evidence of the plaintiff was closed by order under Order 17 Rule 3 CPC and the suit was dismissed. Interim orders have been reproduced from 28.5.2009 onwards. A perusal thereof goes to show that numerous opportunities were granted to the plaintiff to produce evidence, however, plaintiff failed to bring on record even an iota of evidence.

The entire attitude of the plaintiff comes out to be very casual and cursory. The suit was filed on 29.9.2006 and it was kept being adjourned mostly at the instance of plaintiff. It was ultimately decided on 1.6.2011. For more than 4 ½ years the suit remained pending. The plaintiff could not adduce any evidence on file during that span of time. The trial Court was fully satisfied in closing evidence of plaintiff by order and dismissing his suit for want of evidence. The first Appellate Court rightly dismissed the appeal filed by the plaintiff/appellant.

As far as the present regular second appeal is concerned, I do not find any element of merit in it. Counsel for the appellant put forward an argument that representation of defendant No.1 is not proper since it is not disclosed as to who is the authorized person, who had engaged the counsel, therefore, the appellant has moved an application for issuance of direction to defendant No.1 for compliance of order passed by Civil Judge(Jr.Divn.), Kurukshetra or in the alternative to allow proposed amendment vide an application dated 8.10.2009. I find that this application does not have any head or tail and is nothing but a delaying and dilatory tactic just to divert the attention of the Court to the issues,

which hardly have any relevance in this case. The plaintiff himself had sued defendant No.1, as such defendant No.1 had appeared and offered a contest in the trial Court, before first Appellate Court as well as before this Court. Even if for a moment though not finding merit in such contention of the appellant/plaintiff, it is taken that defendant No.1 is not being properly represented, even then plaintiff has to stand on his own legs. It is well settled that a fact should be first pleaded then proved. Though a fact admitted need not be proved but the facts, which are controverted are required to be proved by leading evidence by the party on which onus of proof lies. Here it was for the plaintiff to establish his case by producing evidence on record, which he has miserably failed to do. Even if version of defendants is not taken into consideration, then also the plaintiff does not have any case. He having failed to produce any evidence on record despite availing of several opportunities, his evidence was rightly closed under Order 17 Rule 3 CPC and suit dismissed for want of evidence. The first appellate Court correctly dismissed his appeal. Therefore, in this RSA, I do not see any reason to set aside the judgments passed by the Courts below by way of acceptance of appeal since those judgments do not suffer from any illegality or infirmity. They are perfectly in accordance with law and no fault can be found therewith.

The appeal stands dismissed accordingly.

20.12.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No