

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-1075-2016 (O&M)

Date of Decision: 18.5.2018

Rajender Kumar

....Appellant.

Versus

Devi Dutt and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

PRESENT: Mr. Sandeep Lather, Advocate for the appellant.

AJAY KUMAR MITTAL, ACJ.

CM-2933-C-2016

Application is allowed and the appellant is permitted to make deficiency in affixing the court fee good.

CM-2934-C-2016

Delay of 9 days' in refiling the appeal is condoned. CM stands disposed of accordingly.

RSA-1075-2016

1. Plaintiff-appellant filed a suit for possession with consequential relief of declaration directing the defendants to hand over the possession of the suit land and declaring the sale deed dated 21.6.1999 and mutation dated 4.8.1999 as illegal, null, void and not binding on the rights of the plaintiff.

The said suit was dismissed by the trial court vide judgment and decree

dated 11.7.2014. The appeal preferred by the plaintiff was also dismissed

by the first appellate court vide judgment and decree dated 23.7.2015. It is now the plaintiff is in regular second appeal before this Court.

2. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The plaintiff was owner of the agricultural land measuring 5 kanals 5 marlas situated within the revenue estate of Sarai Aurangabad, Tehsil Bahadurgarh, District Jhajjar. The father of the plaintiff purchased a plot from the defendants in the year 1967-68 and constructed the residential house in which the plaintiff is residing presently. In the year 1999, while the plaintiff was residing at Pondichery and was working as a labour contractor, defendant No.1 informed him that the suit land being situated at the prime location, can be sold in plots if the possession of the same is given to him. The defendants represented that they would work as his agent and the sale deed would be executed and registered by the plaintiff in favour of the vendees. According to the plaintiff, the defendants got scribed the sale deed dated 21.6.1999, Ex.PX from Hoshiar Singh, Deed-Writer and got it registered without his thumb mark. Defendant No.1 sent the scribed sale deed by registered post to the plaintiff asking him to send two passport size photos and put his signatures at the indicated places as well as on the blank papers sent with the sale deed. The plaintiff put his signatures on the said sale deed and defendant No.1 got the sale deed registered on 21.6.1999 in his absence. On the basis thereof, the defendants had also got sanctioned mutation on 4.8.1999. Accordingly, the plaintiff filed a suit for possession with consequential relief of declaration.

3. The said suit was contested by the defendants by filing a written statement and taking various preliminary objections therein. It was

pleaded that the plaintiff had no concern with the property in question as he was neither owner nor in possession of the suit land. The defendants were owner in possession of the suit property vide sale deed dated 21.6.1999 executed by the plaintiff with his free and sound mind for the consideration of ₹ 1,01,720/- in their favour. The other averments made in the plaint were denied and a prayer for dismissal of the suit was made.

4. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether sale deed No.1360 dated 21.6.1999 and mutation No.2160 dated 4.8.1999 are illegal, null and void? OPP
2. Whether the plaintiff is entitled to a decree of possession as prayed for? OPP
3. Whether suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the suit is barred by limitation? OPD
6. Whether the plaintiff is estopped to file the present suit by his own act and conduct? OPD
7. Whether the plaintiff has concealed the material facts from the court, if so to what effect? OPD
8. Relief.

5. On appreciation of the oral as well as documentary evidence led by the parties, the trial Court held that the plaintiff had failed to prove himself to be the owner of the suit land whereas the defendants had proved

the due execution of the sale deed dated 21.6.1999. Accordingly, the trial Court vide judgment and decree dated 11.7.2014 dismissed the suit of the plaintiff. Feeling aggrieved, the plaintiff took the matter in appeal and the lower appellate Court concurred with the judgment of the trial court and affirming the findings of the said court, dismissed the appeal vide judgment and decree dated 23.7.2015. Hence, the present appeal claiming the following substantial questions of law:-

- “i) Whether the relief of possession can be refused to the appellant-plaintiff with regard to the disputed land without appreciation and consideration of settled proposition of law which mandate the presence of seller while registration of sale deed?
- ii) Whether the wrong interpretation of Section 32 of Registration Act, 1908 can be override by settled proposition of law?
- iii) Whether the findings of the courts below without referring to the evidence of the appellant-plaintiff amounts to misreading of evidence and has caused injustice to the appellant-plaintiff?”

6. I have heard learned counsel for the appellant and have gone through the judgments and decrees with his assistance.

7. Learned counsel for the appellant has made an unsuccessful endeavour to persuade this Court to re-appreciate the evidence led by the parties before the trial Court and record a fresh finding on the basis thereof. However, this contention cannot be accepted in view of the embargo put on this Court by Section 100 of the Code of Civil Procedure. This Court

would, thus, refrain from countenancing that submission except when it is not shown by the counsel for the plaintiff that there is any patent error of law, or the findings recorded by the two courts below are perverse in any manner or that this appeal raises a substantial question of law for consideration of this Court. The courts below had concurrently recorded that the sale deed dated 21.6.1999, Ex.P1 was duly executed by the plaintiff and, therefore, was legal and binding on the plaintiff. Learned counsel for the appellant could not show or point out any illegality or perversity in the concurrent findings returned by the courts below. Neither any question of law much less a substantial question of law arises in this appeal for consideration of this Court nor was any pointed out by the counsel.

8. In view of the above, there is no merit in this appeal and the same is hereby dismissed. No costs.

May 18, 2018
gbs

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

Speaking/Reasoned

Yes

Whether Reportable

Yes