

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.2526 of 2016 (O&M)

Date of decision: 19.09.2018

Pritam Singh

..... Appellant

Versus

Mohinder Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. R.S. Sekhon, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-6716-C-2016

Application is allowed and the delay is condoned.

Main Case

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below dismissing his suit under Section 77 of the Registration Act and for mandatory injunction directing the defendants to get the sale deed registered.

It is the case of the plaintiff that a sale deed was executed with respect to share of a small house to the extent of 5/12th share by the defendants on 28.04.1997 and the entire sale consideration had been paid in advance but the defendants are not coming forward to get the sale deed registered. It was pleaded that the parties had mutually agreed that the sale deed would be got registered on 30.07.1997 but the defendants did not come forward to get the sale deed registered and when the plaintiff

presented before the Sub-Registrar, he is refused to register. The proceedings before the Sub-Registrar did not turn fruitful, hence, the plaintiff filed a suit. The defendants contested the suit and pleaded that Labh Singh, one of the executant is mentally retarded. It was further pleaded that the document was not executed by them voluntarily and sale consideration has not been paid.

Both the Courts after appreciating the evidence have found that Labh Singh and Lachman Singh were not mentally sound and they were admitted in Pingalwara society and thereafter treated at Mental Hospital, Amritsar. The Courts further found that the alleged sale deed is having cutting and interpolations which have not been explained. Still further, the Courts found that the attesting witness Durga Parshad has admitted that no consideration has been paid in his presence.

Both the Courts on appreciation of evidence have recorded a finding of fact. Learned counsel for the appellant submitted that the scope of suit under Section 77 of the Registration Act is limited and the Civil Court is only to see whether the document has been executed or not, however, the Civil Court cannot go into the circumstances under which the documents have been executed.

This Court has considered the submission, however, find not substance therein. On careful reading of Section 77 of the Registration Act, it is apparent that the jurisdiction of the Civil Court is not barred from examining the validity of the document executed. Admittedly, Labh Singh who was mentally retarded could not have validly executed the document. It is also admitted that Labh Singh has now died. It is further not in dispute that there is cuttings and interpolations on the alleged unregistered sale

deed. Still further, this Court while dismissing a writ petition filed by the petitioner has observed as under:-

“On the basis of the above discussion, we hold that the petitioner has made an attempt to misuse the process of the Court for seeking ouster of Smt. Mohinder Kaur, who is real owner of the property in dispute and therefore, he deserves to be saddled with the exemplary costs.

For the reasons mentioned above, the writ petition is dismissed with costs of Rs.10,000/- which the petitioner shall pay to Smt. Mohinder Kaur.”

Although, learned counsel for the appellant made sincere attempt, however, could not persuade this Court to take a different view particularly keeping in view the fact that he could not draw attention of the Court to any perversity or misreading or non-reading of substantive evidence in the judgments under appeal. The scope of interference in second appeal is limited and the Court cannot while hearing the second appeal, re-hear the suit.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

19.09.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No