

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2571 of 2016 (O&M)

Date of Decision: May 08, 2018

Tejinder Singh

...Appellant

Versus

Anoop Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: None for the appellant.

AMIT RAWAL, J. (Oral)

CM Nos.6824-C & 6825-C of 2016

For the reasons mentioned in the applications, which are supported by affidavits, delay of 523 days in re-filing and 20 days in filing the appeal is condoned.

C.Ms stand disposed of.

RSA No.2571 of 2016

The present Regular Second Appeal is at the instance of the appellant-plaintiff against the judgment and decree dated 30.5.2013, whereby the appeal filed by the respondent-defendants against the judgment and decree dated 20.9.2011, whereby the trial Court decreed the suit filed by the appellant-plaintiff, has been allowed.

The present appeal has been filed on behalf of the appellant on the premise that he had claimed possession of the suit property, i.e., house constructed on the land measuring 500 sq.yards, situated within the Lal Lakir of Village Behman Dewana on the ground that he was the owner in possession of the suit property, but about one year back, the defendants

illegally and forcibly took the possession of the same.

The aforementioned suit was contested by defendant Nos.3 and 4 as the suit against defendant Nos.1 and 2 was dismissed with the plea of limitation. It was stated that the plaintiff had not filed any document to prove the ownership of the property, whereas the defendants had been in possession of the same for the last 25 years.

Plaintiff, in support of his case, examined himself as PW-1 and came out with the plea that an agreement to sell dated 5.2.1987 was executed between him and defendant No.2 Bhoop Singh and in lieu thereof, the possession of the suit property was handed over by the plaintiff to defendant No.2. At the time of execution of the agreement to sell, a sum of ₹50,000/- was received as earnest money by the plaintiff from defendant No.2. The date for registration of the sale deed was 5.2.1998. The plaintiff appeared before the office of Sub Registrar, Bathinda, but the defendants did not come.

On the other hand, the defendants examined three witnesses, i.e., DW-1 Karnail Singh, DW-2 Chand Singh and DW-3 Anoop Singh. It has come in the testimony of the aforementioned witnesses that Jagroop Singh and Anoop Singh had already sold 5.38 marlas out of the land for a sale consideration of ₹56,499/- on 26.4.2007.

The trial Court, on the basis of the aforementioned evidence, decreed the suit, but the Lower Appellate Court reversed the findings, for, the agreement to sell does not confer title as the remedy for the plaintiff was to seek the specific performance of the agreement to sell.

It has been contended that the appellant-plaintiff had entered into an agreement to sell dated 5.2.1987 with defendant No.2 and handed

over the possession and since they did not come forward for registration of the sale deed, the agreement to sell had fallen through, therefore, cause of action accrued to file the suit for possession. The Lower Appellate Court committed illegality in holding that the possession of defendant No.1 was legal and valid, but the defendants failed to prove any document of ownership and, therefore, there is a gross illegality and perversity.

I have appraised the paper book. The grounds raised in the memorandum of appeal are not able to bring the case within the realm of perversity, for, the plaintiff in his testimony relied upon copy of judgment dated 15.10.1982 to prove the ownership, but the measurement of the property was 90'x30' which comes to 300 sq.yards as alleged in the plaint. Once the plaintiff had not been able to prove the identification of the property and area nor could produce the relevant agreement, which was marked as 'A'. The Lower Appellate Court had no option but to dismiss the suit, for, the defendant was put into possession and as per the provisions of Section 53-A of the Transfer of Property Act, his possession was also protected.

For the reasons stated above, the judgment and decree of the Lower Appellate Court is perfectly legal and justified and does not call for any interference. Resultantly, the appeal is dismissed.

May 08, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No