

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

108

**RSA-3199-2016 (O&M)
Date of Decision : 28.8.2018**

Ramotar and another

....Appellants

vs.

Kanta Devi and others

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr.S.K.Chauhan, Advocate
for the appellants.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below decreeing a suit for permanent injunction filed by respondents No.1 and 2 restraining the appellants and respondents No. 3 to 8 from interfering in their possession over the land in dispute.

The plaintiffs-respondents No.1 and 2 claimed that the land was owned by Paraga and after his death his wife and two daughters had sold their 3/10 share totaling 50 Kanals and 14 Marlas to them by registered sale deed for consideration of Rs.3,05,000/-(apart from Rs. 5 lakhs which they had deposited in the loan account with the Punjab National Bank). They further claimed that the appellants were trying to dispossess them on the basis of a prior release deed.

The case of the appellants on the other hand was that infact respondents No. 3 to 5 had executed a valid release deed in their favour which was prior to the sale deed and consequently they had no right to

execute the sale deed in favour of respondents No.1 and 2. Both the Courts below noticed that at the time when the sale deed was executed by respondents No.3 to 5 they had placed on record a Jamabandi for the year 2000-2001. In that Jamabandi, the land in dispute was shown as free from encumbrance whereas actually the land had been mortgaged by the appellants and the respondents No. 3 to 8 with the Punjab National Bank as far as back in the year 1997 . The bank had filed a suit for recovery which was decreed and ultimately the respondents No. 1 and 2 had paid a sum of Rs. 5 lakhs for that also. The Courts also noticed that the appellants never got mutation sanctioned on the basis of the release deed. It is on the basis of these facts that the Court came to the conclusion that in fact the appellants were trying to befool the respondents No.1 and 2 and had managed to obtain the secret release deed which they have kept hidden from the revenue authorities. The Courts also came to the conclusion that on the execution of the sale deed, respondents No.1 and 2 were in possession. The Courts also noticed that the appellants had challenged the sale deed by way of civil suit but that civil suit was unsuccessful. Having noticed these facts, the Courts decreed the suit and hence, the present appeal.

Learned counsel has argued that finding of collusion which has been returned by the Courts below is ex facie illegal because the appellants had even filed a criminal case against respondents No.3 to 5 where they were convicted and sentenced to one year imprisonment and this clearly proved that they were not in collusion. He has also argued that before giving relief to the respondents No.1 and 2 it was incumbent upon the Courts below to have set aside the release deed.

Coming to the second issue first, it must be kept in mind that the suit was not a title suit and was only an injunction suit and therefore, it was not incumbent upon the Courts to give final and definitive finding on title. What the Courts had to see whether the respondents No.1 and 2 were in possession and, if so, their suit had to be decreed.

Having gone through the facts and of the case and documents which have been shown for my perusal, I am not persuaded to hold that the findings of the Courts below are either based on no evidence or on such perverse misreading of the evidence so as to render them liable for interference in second appeal.

The appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

28.8.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No