

RSA No.4118 of 2016 (O&M)

Manoj Kumar
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

RSA No.4118 of 2016 (O&M)

Hans Raj

....Appellant

Versus

Prem Chand and Ors.

....Respondents

Date of Order: 02.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vishal Aggarwal, Advocate for the appellant.

AMIT RAWAL, J (ORAL)

C.M.No.10586-C of 2016

For the reasons stated in the application and the delay being insignificant, the same is allowed. Delay of 46 days in filing the appeal is condoned.

RSA No.4118 of 2016

Plaintiff-appellant is aggrieved of the concurrent findings of both the courts below whereby his suit for declaration and permanent injunction has been dismissed vide judgment and decree dated 18.10.2014 passed by learned Civil Judge (Jr. Division), Pathankot and the findings were affirmed by the lower Appellate Court vide judgment and decree dated 16.2.2016.

The suit was filed on the premise that originally Sain Dass was co-owner in possession of the land as mentioned in the head note of the plaint. He expired on 17.4.2012 leaving behind four (4) Class-1 legal heirs i.e plaintiff/defendants. Afore-said property was purchased in the name of said Sain Dass by the plaintiff out of sale consideration provided by the

plaintiff as a token of respect of his father, for, the plaintiff had been serving in the Army and was also looking after said Sain Dass during his life time. In the year, 2003 due to severe illness, the father of the plaintiff and the defendants i.e. Sain Dass lost his memory and started living with the defendants in village Ferozpur Kalan whereas the defendants after taking undue advantage of the same illegally got executed sale deed dated 06.09.2005.

The suit was contested by the defendants by disputing the fact that the property was purchased in the name of said Sain Dass out of the funds provided by the plaintiff. Ownership of the plaintiff was emphatically denied. It was submitted that their father was the owner of the property and all the above-mentioned deeds were also executed by their father.

From the pleadings of the parties, the following issues were framed:-

- 1. Whether the plaintiff is entitled for declaration as prayed for? OPP*
- 2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
- 3. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 4. Whether the plaintiff has not come to the court with clean hands and suppressed the material facts? OPD*
- 5. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 6. Whether the plaintiff filed the present suit just to drag the defendants in uncalled litigation? OPD*
- 7. Relief.*

In order to prove his case, plaintiff examined Ram Dass as PW-2 besides appearing himself as PW-1.

On the other hand, defendants examined himself as DW-1, Hari Ram as DW-2, Pardeep Kumar as DW-3 and Krishan Kumar as DW-4 before closing his evidence.

On the basis of material evidence in as much as relevant documents on record, the trial Court dismissed the suit of the plaintiff and the findings have been upheld by the lower appellate Court in appeal.

Learned counsel for the appellant submitted that both the Courts below have gravely erred in dismissing the suit as the entire suit property was purchased out of the funds provided by the plaintiff since the father of the plaintiff namely Sain Dass was merely a name ender, who had no sufficient means to buy the said land. This fact has also been admitted by one of the defendants in his cross-examination. Said Sain Dass was not the actual vendor and could not have executed the sale deed as he was mentally ill. All these factors have been totally ignored while passing the impugned judgments.

Having heard the learned counsel for the appellant and perusing the entire case file, in my view, there is no force in the submissions of learned counsel for the appellant as the plea of the suit property being 'benami' set up by the appellant is not applicable in the light of provisions of Benami Transaction (Prohibition) Act, 1988. Even no account/cheque book or any statement of bank account have been brought on record from where it could transpire that the money for purchasing the suit property had actually been provided out of the funds of the plaintiff. It has come on record by way of evidence that the property in question was self acquired property of late Sain Dass and he executed transfer deeds in favour of the defendants/respondents, which has been rightly observed by the lower

Appellate Court.

Said Sain Dass had died in the year 2012 whereas the documents are related to the year 2007 and during all these period, the plaintiff kept silent and never attempted to challenge the aforesaid facts.

In view of what has been recorded herein-above is sufficient to convince this Court to form an opinion that no fault can be found with the judgments of both the courts below.

Dismissed.

May 02, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No