

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

112

RSA No.5299 of 2016 (O & M)
Date of Decision:19.01.2018

Harbans Lal (deceased) through LRs

...Appellant

Versus

Kishan Chand

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Dinesh Mahajan, Advocate
for the appellant.

ANIL KSHETARPAL, J.(Oral)

CM No.896-C-2018

Application is allowed, subject to all just exceptions.

Legal heirs of Harbans Lal (deceased-appellant) are brought on record for the purpose of prosecuting this appeal only.

Main Case

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact dismissing his suit for permanent injunction and declaration challenging the sale deed executed by his father in favour of defendant dated 22.06.1989. It is admitted position on the record that Babu Ram, father of the plaintiff-appellant died 9 years before the filing of the suit. Plaintiff had pleaded that Babu Ram, his father, had taken a loan of Rs.3,000/- from the defendant and mortgaged one marla land in favour of the defendant who constructed a shop, whereas adjoining shop has been constructed by the plaintiff.

In the written statement, the defendant pleaded that he had purchased two marlas plot from Babu Ram vide registered sale deed dated 22.06.1989 Ex.D-1 on the file. It was further pleaded that the plaintiff had thumb marked the aforesaid sale deed as an attesting witness. Defendant further pleaded that he has constructed two shops on the aforesaid plot of two marlas and hence owner in possession.

Both the Courts after appreciation of evidence available on the file, dismissed the suit while recording a finding that the suit has been filed after a period of 15 years from the date of execution of the sale deed. Sale deed is a registered document and the plaintiff had thumb marked the same as an attesting witness. The Court has further held that the plaintiff has failed to prove his case as put-forth in the plaint.

This Court has heard learned counsel for the plaintiff-appellant at length. Although, he tried to argue that the execution of the sale deed is not proved and hence the finding of the Courts below are erroneous, however, this Court find no substance therein. Sale deed is a registered document. Defendant has appeared in the witness-box and has proved the sale deed. In fact execution of the sale deed is not being disputed by the plaintiff. Plaintiff had only set up a case that signatures of his father were taken as he had taken a loan and mortgaged the property. Thus, the execution of the sale deed was never in dispute.

Still further, it is clear that the plaintiff filed the suit by concealment of material facts from the Court. Plaintiff concealed that his father had in fact executed a sale deed with respect to 2 marlas and not one marla. Plaintiff had further concealed the fact that he had thumb marked the sale deed as an attesting witness.

In view of what has been observed earlier, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Hence, this regular second appeal is dismissed.

19.01.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No