

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 524 of 2015(O&M)

Date of Order:13.09.2018

Shiv Shanker and another

...Appellants

Versus

Bhagwan Dass and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Ashok Bhardwaj, Advocate,
for the appellants.**

**Mr. Ravi Sharma, Advocate,
for respondent nos.1 and 2.**

ANIL KSHETARPAL, J (Oral).

Plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by both the courts below, dismissing the suit for declaration, partition and permanent injunction and decreeing counter claim for mandatory injunction to hand over possession of the properties given in the counter claim. Plaintiff no.2 is challenging registered sale deeds executed on 16.07.1969 and 31.05.1976. It is an unfortunate litigation between the family members. Bhagwan Dass had two sons and a widow. One son and widow are the plaintiffs-appellants. Originally they claimed that the property is a Joint Hindu Family property. With the amendment of the plaint, it was pleaded that the sale deeds which were executed in favour of DW1-Bagwan Dass, the father, was in fact a benami transaction as money was provided by the wife Santosh.

Defendants, namely Bhagwan Dass and Bharat Bhushan contested the suit and pleaded that defendant no.1-Bhagwan Dass purchased

5 biswas of plot vide sale deed dated 16.07.1969 and constructed a residential house by spending personal earnings. Defendant further pleaded that he also purchased 2½ biswas of land vide sale deed dated 31.05.1976. Defendant further pleaded that he had deposited Rs.30,000/- as fixed deposit receipt in a company which on being refunded was distributed to various family members.

Learned trial court as well as learned first appellate court after appreciating the evidence have found that there is no substance in the suit filed by the plaintiff. The courts have found that the suit filed on 15.05.2004 by the plaintiff qua challenge to the sale deeds executed in the year 1969 and 1976 was hopelessly time barred. Courts have further found that plaintiff no.2 failed to prove that the amount was paid by her. The courts have held that merely because defendant no.1 has in some other litigation admitted that he had received the amount from his wife that would not itself make the property a Joint Hindu Family property. Court have further found that the counter claim filed by the defendant is liable to be decreed as licence in their favour has been terminated and, therefore, counter claimants are entitled to decree for mandatory injunction.

Learned counsel for the appellant has submitted that the 3rd relief claimed in counter claim was not part of the suit and therefore, such relief could not be claimed while filing a counter claim.

It may be noted that when this contention was raised before the learned first appellate court, learned first appellate court rejected the contention while relying upon a judgment passed by the Hon'ble Supreme Court in the case of *Jag Mohan Chawla and another v. Dera Radha Swami Satsang and others*, AIR 1996 Supreme Court, 2222.

Learned counsel admitted that the aforesaid judgment do lay down that the counter claim in respect of cause of action which may be independent but connected or related to the original suit can be decided. In the present case, counter claim with respect to the 3rd issue in the counter claim is directly connected with the suit.

Learned counsel for the appellant further submitted that the father has leased out the property in his favour, i.e. Son, in the year 1999. Both the courts have examined this matter and found that the aforesaid lease deed is not believable particularly keeping in view the fact that plaintiff no.1 is claiming tenant under his father Bhagwan Dass. Further no evidence has been led to prove that plaintiff no.1 ever paid any lease money at any point of time to his father. Further the lease deed alleged is not admissible in evidence being unregistered document.

Still further learned counsel for the appellants while relying upon judgment passed by the coordinate bench in the case of **Nabha Gaushala Committee (Regd.) Nabha v. Ragbir Singh and another, 2016 (1) PLR 585**, has submitted that the suit for mandatory injunction was not maintainable.

This court has carefully read the aforesaid judgment. In the aforesaid case, there was admittedly tenancy between the parties, which came to an end on 28.02.1988. After expiry of the lease, suit for mandatory injunction was filed. This court held that merely because contractual period of tenancy is over, the tenant would be a tenant holding over and therefore suit for mandatory injunction would not be maintainable. In the present case, case set up on the basis of the tenancy has already been disbelieved by the courts.

In view of the aforesaid discussion, this court does not find any good ground to interfere.

The regular second appeal is dismissed.

September 13, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No