

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 1487 of 2017 (O&M)

Date of decision: 8.5.2018

Ramesh Kumar

..... Appellant

Versus

Kamlesh Devi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. A.P.Kaushal, Advocate, for the appellant.

GURVINDER SINGH GILL J.

1. Defendant Ramesh Kumar has filed this appeal challenging judgment and decree dated 6.10.2016 passed by learned Additional District Judge, Hoshiarpur whereby the judgment and decree passed by learned Civil Judge (Junior Division), Hoshiarpur in favour of plaintiff-respondent has been affirmed.
2. The plaintiff had filed the suit seeking permanent injunction restraining defendant no. 1 Ramesh Kumar from interfering or causing any hindrance in construction over the suit property measuring 20 marlas belonging to the plaintiff averring therein that he along with his deceased brother Baldev Raj was exclusive owner of the suit property and that after death of Baldev Raj, his share had devolved upon sons of Gurmail Chand on the basis of a Will, as Baldev Raj had died issue-less. It is averred that the defendant Ramesh Kumar, however, threatened to raise construction over the suit property and

despite being requested to desist from the same, he did not refrain from doing so. The defendant, in his reply, took a stand that in fact Baldev Raj had executed an agreement dated 15.3.1994 for sale of the suit property and had received a part payment of ₹ 50,000/- and had subsequently received the balance sale consideration on 15.10.1994 and delivered possession to defendant no. 1 and upon getting the possession, the defendant had raised boundary wall and was running a dairy over the suit property. The parties was put to proof on the following issues :-

- “1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
2. Whether plaintiff along with Baldev Raj deceased brother of plaintiff has executed an agreement to sell dated 15.3.1994 with defendant No.1 and received an amount of ₹ 50,000/- as earnest money and delivered the possession on 15.10.1994 after payment of remaining amount of sale consideration? OPD
3. Whether the suit is not maintainable? OPD
4. Relief.”

3. The Plaintiff, in order to prove his case, examined PW-1 Gurmail Chand, PW-2 Gurmail Singh, PW-3 Kamlesh Devi and PW-4 Manoj Sharma, Advocate whereas the defendant in order to rebut the case of plaintiff examined DW-1 Arvind Sood, DW-2 Ramesh Kumar, DW-3 Sudhir Kumar and DW-4 Jagjit.
4. The learned lower Court upon appraisal of evidence on record returned its findings on issue no. 1 and 2 in favour of the plaintiff and against the defendant and consequently decreed the suit. The appeal filed by the

defendant was dismissed by the learned Additional District Judge, Hoshiarpur vide impugned judgment and decree dated 6.10.2016, which has been challenged by way of filing the present appeal.

5. The learned counsel for the appellant has submitted that possession of the plaintiff over the suit property is fully established and that in fact, the plaintiff having sold the suit property to the defendant, cannot claim any possession or any right in the same.
6. I have considered the aforesaid submission. The plaintiff relies upon an agreement dated 15.3.1994 to sell the suit property. However, neither there is any recital regarding delivery of possession in the said agreement nor the same is registered. The defendant has not produced any sale deed to substantiate his stand that he has purchased the suit property. During the course of proceedings of the suit, a local Commissioner had been appointed who reported that the defendant had recently constructed a wall about 4-5 feet high on the eastern and western side and had also affixed an iron gate towards the western side with the help of bamboo sticks, during the pendency of the suit. In fact, the report of the Local Commissioner Ex.PW-5/A would show that while the Local commissioner was appointed by the lower Court on 8.9.2008 who issued notices to the parties regarding his visit to the spot on 10.9.2008 but when the Local Commissioner visited the spot, freshly raised wall was found to be there which has been recently constructed and was still wet.
7. The aforesaid facts clearly indicate that the case set up by the defendant regarding his having purchased the suit property is not substantiated at all whereas it is borne out that in fact defendant is trying to grab the property by

raising construction on the same. There are concurrent findings of both the Courts to this effect which do not suffer from any infirmity. As such, I do not find any ground to interfere in the impugned judgment and the same is upheld.

8. There is no merit in the appeal and the same is hereby dismissed.

(Gurvinder Singh Gill)
Judge

8.5.2018
Kamal

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