

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

(157)

RSA-1592-2017 (O&M)

Date of Decision: October 30, 2018.

Jaimal Singh

..Appellant

Versus

Sardool Singh and others

..Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Amit Arora, Advocate, for the appellant.

AMIT RAWAL, J. (ORAL)

CM-3833-C-2017

For the reasons stated in the application, delay of 14 days in filing the appeal is condoned.

Application is allowed.

CM-3835-C-2017

Prayer in the application is for impleading the legal representative of respondents No.2 and 4, namely, Balbir Singh (deceased) and Sunder Singh (deceased) respectively.

Heard.

In view of the facts mentioned in the application and arguments addressed, persons mentioned in Para 3 and 4 of the application are impleaded as legal representatives of respondent No.2 Balbir Singh (since deceased) and respondent No.4 Sunder Singh for the purposes of adjudication of this appeal, subject to just exceptions.

Application is allowed.

RSA-1592-2017 (O&M)

Appellant-defendant No.1 has not been successful in defending

the suit filed by respondent-plaintiff seeking declaration to be owner in joint possession of the suit property by challenging the sale deed dated 16.11.2007 obtained by playing fraud on him. It was averred that the plaintiff is in cultivating possession of the land measuring 47 kanal 12 marlas out of joint khata of suit land measuring 205 kanals 12 marlas by way of oral partition but entries in khasra girdawari khudkashat were wrong one. The defendant No.1 had committed fraud upon the plaintiff by preparing the sale deed dated 16.11.2007. The alleged sale deed was never read over to the plaintiff nor he received any consideration, therefore, mutation No.7719 sanctioned on the basis of fraudulent sale deed was also illegal. The plaintiff came to know about the alleged fraudulent sale deed when defendant No.1 threatened to take forcible possession of the land measuring 9 kanal 13 marlas from him out of suit land of joint khata. The plaintiff requested defendant No.1 to cancel the alleged sale deed and not to dispossess him forcibly but he refused to do so.

Defendants No.1, 4, 6 and 7 were proceeded against ex parte. Defendants No. 3 and 5 appeared and filed the written statement taking preliminary objections regarding maintainability of the suit; locus standi and the suit being bad for non-joinder and misjoinder of the parties. On the basis of pleadings of the parties, the trial Court framed issues and on the basis of evidence produced before it, decreed the suit ex parte. The lower Appellate Court also dismissed the appeal.

Mr. Amit Arora, learned counsel appearing on behalf of the appellant submits that the concurrent finding of fact of the Courts below is based upon conjectures and surmises. The entire evidence led by the plaintiff has gone un rebutted as defendant did not contest the suit and opted

to be proceeded against ex parte. The defendants did not lead any evidence in support of their averments taken in the written statement as per provisions of Order 6 Rule 4 CPC. Even if the defendants were ex parte, no witness of the sale deed except two interested witnesses have been examined. Even Court fee in this regard has not been paid. The suit was not maintainable.

I have heard the learned counsel for the appellant, appraised the paper book and of the view that there is no merit in the submission of learned counsel for the appellant as no issue of Court fee was either framed or proved nor any application in this regard at a later point of time was filed. The suit was filed immediately in the year 2008 after the execution of the sale deed and the sale consideration allegedly to be paid for registration of the sale deed is not before the Registrar. No consideration was passed particularly and the respondent- plaintiff continued to remain in possession. No sane person would allow the seller to retain the possession after having deposited the amount by virtue of registered document. Defendant miserably failed to contest the suit and prove the sale deed.

I do not find any illegality and perversity in the findings rendered by both the Courts below.

No substantial question of law arises for adjudication of this Court.

Accordingly, the appeal is dismissed.

October 30, 2018.
harsha

(AMIT RAWAL)
JUDGE

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