

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

RSA No.168 of 2018 (O&M)
Decided on:-January 11, 2018.

Chanan Singh.

.....Appellant.

Versus

Gurdev Kaur and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Ankur Ghai, Advocate
 for the appellant.

HARI PAL VERMA, J.

The appellant-plaintiff has filed the present regular second appeal against the judgment and decree dated 08.09.2017 passed by learned Additional District Judge, Ludhiana, whereby his appeal against the judgment and decree dated 18.02.2015 passed by learned Civil Judge (Junior Division), Ludhiana, was dismissed.

Briefly stated, the appellant-plaintiff had filed a suit for declaration and permanent injunction with the averments that the respondent-defendants No.1 to 6 had entered into an agreement dated 08.06.2002 to sell the property measuring 11 Kanal 0 Marla comprised in Khasra No.8//24 (8 Kanal), 8//23 (3 Kanal 0 Marla) out of property measuring 13 Kanal 7 Marlas as per Jamabandi for the year 1990-91 situated at village Taraf Karabara, Tehsil and District Ludhiana in favour of the plaintiff. The respondent-defendants No.1 to 6 had claimed themselves to be owners of the suit

property left by Bhajan Singh son of Ram Singh, who was the owner of 111 Kanal 0 Marla land out of total property measuring 166 Kanal 10 Marlas on the basis of Will dated 04.01.2001 registered with the office of Sub-Registrar, Ludhiana in the equal share. Said Bhajan Singh became owner by virtue of a civil Court decree dated 18.01.1995 passed in a civil suit No.439 dated 08.09.1989 by learned Additional Senior Sub-Judge, Ludhiana.

It was further pleaded that the respondents No.1 to 6 had received a sum of Rs.2 lakhs from the plaintiff as earnest money on 08.06.2002 in the presence of marginal witnesses at the time of execution of the agreement. As per the terms of agreement, the rate of land was fixed as Rs.11 lakhs per acre. The plaintiff was entitled to get the sale deed executed in his favour or in favour of any person of his choice within a period of one month from the date of agreement to sell dated 08.06.2002. In terms of the agreement dated 08.06.2002, the plaintiff advised defendants No.1 to 6 and defendant No.7 to withdraw their civil and criminal cases pending between them in various courts with regard to the suit property. The matter was compromised between them on 10.06.2002, but the defendants No.1 to 6 did not sign the compromise, though it was signed by defendant No.7, who started claiming himself to be owner of the property in dispute on the basis of *ex parte* judgment and decree passed by the civil Court in a suit titled as “*Jarnail Singh Versus State of Punjab and others*” and got his name entered in the revenue record. Thereafter, he sold the land to the other defendants No.8 to 11 by way of three different sale deeds. The plaintiff has thus challenged aforesaid sale deeds on the ground of it being a sham transaction and act of fraud. Since the defendants are threatening to dispose of the suit

property to which they have no legal right, title or interest, the plaintiff is constrained to file the instant suit.

Though defendants No.1 and 3 appeared through their counsel, but they did not file their written statement. Therefore, they were proceeded ex parte. Similarly, defendants No.2, 4 and 6 failed to appear before the civil Court despite service and therefore, they were also proceeded ex parte vide order dated 13.01.2005 passed by the civil Court.

Defendant No.7 had filed his written statement and pleaded that the suit land is exclusive property owned by the defendants No.8 to 16 and the plaintiff or defendants No.1 to 6 have no concern with the suit land. The defendant No.7 being registered owner of the suit property had sold the same to defendants No.8 to 16 by way of three different sale deeds dated 03.09.2002, 03.09.2002 and 05.09.2002. The defendant No.7 had acquired the right of ownership of the suit property on the basis of sale deeds bearing Wasika No.3526 dated 10.05.1993 and Wasika No.3700 dated 11.05.1993. Accordingly, mutation No.23874 was sanctioned in favour of defendant No.7. After execution of the sale deeds, the defendants No.8 to 16 were handed over the actual and physical possession of the suit property. Therefore, the plaintiff has no right to file the suit. The compromise dated 10.06.2002 as projected by the plaintiff was disputed.

Defendants No.8 to 16, though filed their separate written statement, but had taken a similar stand to the averments made by defendant No.7.

During pendency of the suit, defendant No.7 had died. However, his legal heirs were ordered to be impleaded by the civil Court vide order dated 18.05.2009.

On the basis of pleadings of the parties, the civil Court formulated the following issues:

1. Whether the plaintiff is entitled to declaration as prayed for? OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
3. Whether the suit is not maintainable? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Relief.

Vide judgment and decree dated 18.02.2015, learned civil Court held that the plaintiff is not entitled to any of the reliefs prayed for and consequently, dismissed the suit filed by the plaintiff.

Aggrieved against the aforesaid judgment and decree dated 18.02.2015 passed by the civil Court, the appellant-plaintiff preferred an appeal before the lower appellate Court. But the appeal was also dismissed by learned Additional District Judge, Ludhiana vide judgment and decree dated 08.09.2017.

Still aggrieved, the appellant-plaintiff has filed the present regular second appeal.

Following substantial questions of law have been raised by the appellant-plaintiff:

- i. Whether the judgment and decrees passed by the learned lower court below are contrary to the evidence

and record brought on file by the parties?

- ii. Whether the judgment and decree passed by the learned lower courts is based on misappreciation of the evidence and the records brought on file by the parties?
- iii. Whether the judgment and decree passed by the learned lower court is against the law laid down by the Superior Courts?

Learned counsel for the appellant-plaintiff has argued that the civil Court has committed a grave error in dismissing the suit of the plaintiff. Even the lower appellate Court did not frame separate issues and did not give separate findings on different issues thereby causing grave injustice going to the roots of the matter. He has further contended that the findings recorded by the Courts below are against the law and facts and are based upon surmises and conjectures.

I have heard learned counsel for the appellant-plaintiff.

Vide impugned judgment dated 18.02.2015, learned civil Court had declined the relief claimed by the plaintiff against defendants No.1 to 6 that they are legally and morally bound to execute the sale deed of the suit property in favour of the plaintiff @ Rs.11 lakhs per acre and that the defendants have already received Rs.2 lakhs from the plaintiff as earnest money vide agreement to sell dated 08.06.2002. The plaintiff has based his claim on agreement to sell dated 08.06.2002. However, interestingly, the said agreement, though was produced in the Court, but the same was never exhibited as a document. Therefore, the said agreement could not have been read into evidence. The plaintiff has not examined even a single marginal witness of the said agreement. Even the testimony of the plaintiff was not

found trustworthy though, in his examination-in-chief, he has stated that defendant No.7 Jarnail Singh has no right or concern with the suit property and had fraudulently executed the sale deeds in favour of defendants No.8 to 16. Interestingly, in his cross-examination, the plaintiff had admitted that two sale deeds had been executed in favour of defendant No.7. Thus, he has belied from his own case. He has shown ignorance about the cases pending between the parties though in his affidavit, he has stated that he had persuaded defendant No.7 to withdraw all the civil and criminal litigation pending between defendant No.7 and Bhajan Singh.

The civil Court has accordingly dismissed the suit as the very execution of the agreement dated 08.06.2002, which is the very basis for the plaintiff to file the suit, has not been proved. As the plaintiff has failed to prove that he has any right or interest in the suit property, he is lacking even locus standi to challenge the sale deed executed by defendant No.7 in favour of defendants No.8 to 16. The defendants have, rather, succeeded in proving that defendant No.7 was owner of the suit property at the time of execution of the agreement in favour of defendants No.8 to 16.

DW2 Kiran has proved that defendant No.7 was registered owner of the suit property by way of sale deed dated 10.05.1993 bearing Wasika No.3526 and sale deed dated 11.05.1993 bearing Wasika No.3700 and mutation No.23874 was duly sanctioned in favour of defendant No.7 qua the suit property. Accordingly, at the time of purchase of the suit property, the defendants No.8 to 16 had inspected the revenue record and found that defendant No.7 was competent to sell the suit property in their favour. Thus, it was held by the civil Court that defendant No.7 being lawful owner of the

suit property had every right to execute the sale deeds in favour of defendants No.8 to 16 and the plaintiff has miserably failed to show that as to how the sale deeds are illegal. Therefore, the crucial issues No.1 and 2 were answered in favour of the defendants.

Once the appellant-plaintiff himself has failed to prove the very execution of the agreement to sell dated 08.06.2002, which was the sole basis of his claim, the appeal filed by him has rightly been dismissed by learned lower appellate Court. Therefore, there is no illegality in the concurrent finding of facts recorded by the Courts below.

No other point was argued.

Since the controversy involved in the case has duly been considered by the Courts below, no substantial question of law arises in the present regular second appeal.

Thus, affirming the judgment and decree dated 18.02.2015 passed by the civil Court as well as the judgment and decree dated 08.09.2017 passed by the lower appellate Court, the instant regular second appeal, being devoid of any merit, is dismissed.

January 11, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No