

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2752 of 2017 (O&M)

Date of Decision: December 03, 2018

Onkar Singh

...Appellant

Versus

Shashi Pal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

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

AMIT RAWAL, J. (Oral)

CM No.6817-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 19 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.2752 of 2017

Appellant-plaintiff has not been successful in seeking declaration laying challenge to the Lease Order No.1067/2010 dated 13.04.2011 issued by the Punjab Wakf Board in favour of defendant No.1 in respect of area measuring 39 sq.yards, situated at Dinanagar.

Plaintiff asserted that he was a lessee of the aforementioned plot/shop and there was an agreement between defendant No.1 that even if he is able to obtain a lease from the Wakf Board, the plaintiff would continue, but defendant No.1 deviated from his commitment and got sanctioned the lease deed in his favour.

Defendant No.1 opposed the suit challenging the locus standi of the plaintiff and maintainability of the suit and alleged that the plaintiff had agreed to sell his lessee rights in favour of the defendants for a consideration of ₹ 4,00,000/- on 02.05.2008 and in lieu thereof delivered the possession and on 31.05.2008 another amount of ₹ 1,00,000/- over and above the amount referred above, was also paid to the plaintiff.

Plaintiff sworn an affidavit dated 26.12.2008 affirming the Wakf Board to be owner of the property in dispute. On the basis of the aforementioned agreement and affidavit, Wakf Board allotted the said property in favour of defendant No.1.

Defendant Nos.2 and 3 opposed the suit and submitted that Shashi Pal-defendant No.1 had applied to the Wakf Board for getting the allotment which was earlier in the name of defendant No.2. Since the plaintiff did not raise any objection in this regard, the lease deed was executed in favour of defendant No.1.

Mr.Vipin Mahajan, learned counsel appearing on behalf of the appellant-plaintiff submitted that the alleged agreement propounded by the defendant was also challenged, but the courts below have misread the evidence of the Estate Officer, who admitted that the property in dispute was earlier allotted to the plaintiff. A person who is already in possession of the plot cannot part with the property. The defendants have failed to prove the passing of the consideration as reflected in the agreement. In such circumstances, the lease was without jurisdiction.

I am afraid that the aforementioned argument is not sustainable, for, the plaintiff should have led evidence in affirmative by denying receipt of the amount. The affidavit is also found in the record of the Wakf Board

meant for issuance of lease order under challenge. It appears to be a case of settlement of some accounts between the plaintiff and the defendants, which could not be proved. If at all, the plaintiff was actually aggrieved for some agreement between him & defendant No.1, the remedy lied elsewhere.

There is no force in the argument of the learned counsel for the appellant to disagree with the concurrent findings of fact and law, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

December 03, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No