

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 2653 of 2018

Date of decision : May 08, 2018

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Mahender Singh

.....Appellant

Versus

Partap Singh

.....Respondent

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BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Arun Singal, Advocate for the appellant.

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RITU BAHRI, J.

The appellant-plaintiff has come up in appeal against the judgment dated 24.1.2018 passed by the Additional District Judge, Sonapat, whereby the appeal against the judgment and decree dated 20.12.2017 passed by the Civil Judge (Junior Division), duty Magistrate, Kharkhoda, Sonapat vide which suit of the plaintiff was dismissed and counter claim of the respondent-defendant was decreed, had been dismissed.

The facts of the case as stated in the plaint, are that the appellant-plaintiff was in possession of the plot measuring 912 square yards, out of which, some part of the plot was situated in the village Farmana while remaining part was situated in Mozam Nagar. The appellant-plaintiff had barbed the said plot with wire. He used to tether his

cattle and prepare cow-dung cakes on this plot. The plaintiff was using this plot for more than 50 years. The respondent-defendant threatened the plaintiff to dispossess him from the said plot. Hence the appellant-plaintiff filed the suit for permanent injunction restraining the defendant from dispossessing the plaintiff from the suit plot.

On notice of the suit, the respondent-defendant appeared and filed a written statement taking the plea that he purchased the said plot in open auction from the Department of Custodian in 1984. Out of this total plot of 1210 square yards about 162 square yards of land was given by the respondent-defendant to the harijans of the Village Farmana for common cause in 2005 enabling them to construct harijan's Chaupal. Besides this, about 100 square yards land was sold by the respondent-defendant to Phoolpati w/o Ishwar vide registered sale deed. The respondent-defendant was in possession of 948 square yards. The respondent-defendant had purchased material and about 28,000 bricks with a view to construct a boundary wall on the land. It was further submitted in the written statement that the appellant-plaintiff was a family member as the ancestors of the respondent-defendant and the appellant-plaintiff were the same. The respondent-defendant had permitted the appellant-plaintiff to put his cow-dung on about 9-10 square yards and now the appellant-plaintiff was claiming his possession on the basis of ownership. A counter claim was separately filed with the written statement praying that an injunction be granted against the appellant-plaintiff restraining him to cause any hindrance in the process of construction going on in the plot of the respondent-defendant and to finally restrain him to interfere in the plot in dispute.

One of the witnesses of appellant-plaintiff, Randhir Singh PW-2, admitted in cross-examination the existence of the bricks in the plot in dispute. Umed Singh Kanoongo Halka Silana was examined as PW-5, who deposed that Ex.PW4/A was prepared by him. He was appointed as Local Commissioner by Tehsildar. On 27.10.2016, he visited the site and conducted demarcation with the help of total station machine. DW-5, Suresh Chand Naib Tehsildar, Sapla stated that on 3.3.2015, he was appointed as Local Commissioner for the demarcation of the killa 2/3 and 2/8/1. He proved his demarcation report Ex.D5/1 and testified same to be correct. As per the report of the Local Commissioner, possession of the plaintiff over 9 Sq Yards was established. The plaintiff while appearing as PW-1 admitted in cross-examination that as per the report of the local commissioner, he was shown to be in possession over one Kurdi only and further stated that he had no proof regarding the ownership of the plot in dispute. After hearing the counsel for the parties and going through the evidence placed on record, trial Court held that the appellant-plaintiff failed to prove his possession over the plot in dispute and the respondent-defendant succeeded in proving that he was the owner in possession over the plot in dispute. Vide the judgment of the trial Court, the suit of the appellant-plaintiff was dismissed and the counter claim filed by the respondent-defendant was decreed.

Aggrieved with the judgment of the trial Court, appellant-plaintiff filed appeal before the lower appellate Court.

It was observed by the lower appellate Court that from the evidence on record it was proved that the property in dispute had been purchased by the defendant from Custodian Department and the same was

registered in the office of Sub Registrar, Kharkhoda vide registered deed Ex. D-1 and Ex.D-2. On the other hand, the plaintiff could not produce any documents regarding his ownership over the plot in dispute. The appellant-plaintiff did not dispute the sale deed Ex.D-1 and Ex.D-2. The appellant-plaintiff being a family member of the respondent-defendant was only given permissive permission to use 9 square yards for the purpose of tethering his cattle. At the most, it can be said that he was in the capacity of the licensee to use the land of the respondent-defendant. Thus lower appellate Court held that from the oral as well as documentary evidence, the possession of the respondent-defendant over the plot in dispute was well-proved. Accordingly, the judgment passed by the trial Court was upheld and the appeal filed by the appellant-plaintiff was dismissed by the lower appellate Court.

In view of all that has been discussed above, there is no illegality or infirmity in the judgments passed by the Courts below, that require interference of this Court. There is no merit in the appeal filed by the appellant-plaintiff. Hence present regular second appeal is dismissed.

May 08, 2018
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No