

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

RSA No.4508 of 2017

Date of Decision.05.04.2018

Harbhajan Singh

.....Appellant

Vs

Teja Singh (deceased) through LRs and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

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AMIT RAWAL J.(ORAL)

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby the suit seeking possession of the property described in the plaint on the basis of registered sale deed dated 25.06.1985 alleged to have been executed by Prabhi Devi, vendor, has been dismissed by the trial Court vide judgment and decree dated 18.11.2013 and upheld by the lower Appellate Court.

The appellant-plaintiff instituted the suit in the year 1999 on the premise that the property in dispute was purchased vide registered sale deed dated 25.06.1985 from Prabhi Devi. In the year 1987, a suit for injunction was filed against the respondents who were attempting to take possession of the property but ultimately liberty was sought from the Court to withdraw the suit, for, they had already raised construction. In that aspect of the matter, the suit was filed in the year 1999.

The defendants contested the suit by denying the ownership of the plaintiff saying that the alleged sale deed was a forged, fabricated and fictitious document. It was also averred that Prabhi Devi widow of Chuhru Ram never owned any property in Mohalla Dharelpur.

The trial Court on the basis of pleadings framed the following issues:-

- “1. Whether the plaintiff is entitled to take possession of the suit property? OPP*
- 2. Whether the suit is not maintainable in the present form? OPD*
- 3. Whether the suit is time barred? OPD*
- 4. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
- 6. Whether the suit is bad for mis-joinder of necessary parties? OPD*
- 7. Relief.”*

The plaintiff examined as many as five witnesses including the scribe and attesting witnesses. On the other hand, defendants also examined six witnesses and brought on record the evidence, particularly, Ex.D1, an intimation from the concerned Municipal Council, Anandpur Sahib, which indicated that there was no record of assessment in the name of Prabhi Devi from the year 1938 to 2001.

The trial Court on the preponderance of evidence dismissed the suit and the appeal preferred against the same was also met with the same fate.

Mr. Amit Jain, learned counsel appearing on behalf of the appellant submits that the registered document carries presumption of truth.

The scribe as well as the attesting witnesses have been examined whereas

the defendants have not come forward as to under what capacity, they were in possession of the property. If at all, they had alleged the sale deed to be fictitious and forged document, they were required to brought on record evidence to prove the same and having failed to do so, the onus regarding authenticity and genuity of the sale deed had not been discharged.

Both the Courts below have completely been swayed away by taking into consideration the document Ex.D1, which even does not specify or identify the property whereas the sale deed reflected the identification of the property bounded by some area. There was no revenue record and therefore, no khasra number was mentioned which could be compared with the revenue record, if any. The document, Ex.D1, therefore, could not be looked into and in the absence of no evidence on behalf of the defendants, the trial Court ought to have decreed the suit by relying upon the registered document.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Jain, for, in such type of cases whereby defendants are denying the ownership of the plaintiff and as well as the erstwhile vendor, the plaintiff is required to discharge the onus as per the provisions of Section 101 of the Indian Evidence Act to prove on record the title of ownership of the vendor. No such evidence had been brought on record enabling the Court to decree the suit instead of dismissing the same. No doubt, focus of both the Courts below had been on Ex.D1, which did not specify any particulars of the property as described in the sale deed and should not have sole basis for dismissal of the suit but in view of what has been noticed above, the plaintiff was required to prove the ownership of the

vendor.

The concurrent finding of fact based upon aforementioned facts and in view of finding of mine does not call for interference or can be brought within the realm of perversity. No ground for interference is made out, much less, no substantial question of law arises for determination by this Court. Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

April 05, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No