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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5472-2017 (O&M)
Date of decision : 5.2.2018

Rachhpal Singh

..... Appellant.

Versus

Gurcharan Singh and ors

..... Respondents.

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ajit Singh Sodhi, Advocate for the appellant.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Prayer in the present regular second appeal is to set aside judgment dated 3.01.2017 passed by learned District Judge, Ferozepur, affirming the judgment and decree dated 24.12.2014 passed by learned Civil Judge (Junior Division), Ferozepur, vide which suit filed by the plaintiff(s) was dismissed with costs.

Plaintiff(s) had filed a suit for declaration that they are owner in possession of the portion marked as ABCDEF and the portion comprised in *killi No. 187 (2-15)* situated in the area of village Sandhe Hasham Tehsil and District Ferozepur. A mandatory injunction was also sought directing defendants No. 1 and 2 to remove the malba/construction on the said site and decree of possession was also sought.

It comes out that according to the plaintiff(s), they had purchased a land measuring 02 kanal 15 marlas from Swaran Kaur, Chamkaur Singh, Balour Singh, Jalour Singh, Amarjit Singh and Baljit Kaur vide registered sale deed dated 29.10.2010. Mutation on the basis of said

sale was also sanctioned. Plaintiff(s) have also purchased $\frac{1}{2}$ share of land bearing *Rect No. 24, Killa No.11/2 (1-17)*. Now the plaintiff(s) are the owners of the said land measuring *02 Kanal 15 marlas*.

In the written statement, the defendants stated that the land was owned by Gurdial Singh, Joginder Singh @ Baljinder Singh and that they have sold the land measuring *02 kanals 15 marlas* to Gurcharan Singh, Bahadar Singh and Sarwan Singh, vide registered sale deed dated 26.05.1970 for a sum of ₹ 10,000; the possession was also delivered to the defendants and they are in possession of the same. Learned trial Court from the pleadings of the parties framed the following issues:-

1. Whether the plaintiff is entitled to the decree of declaration as prayed for?OPP
2. Whether the plaintiff is entitled for the decree of mandatory injunction? OPD
3. Whether the plaintiff is entitled for decree of possession as prayed for? OPP
4. Whether the suit of the plaintiffs is false frivolous and vexatious to the knowledge of the plaintiff?OPD
5. Whether the plaintiff is bound to pay the Court fee?OPD
6. Whether the suit of the plaintiff is not maintainable?OPD
7. Whether the suit of the plaintiff is bad for non-joinder of parties?OPD
8. Relief.

The trial Court took a view that the sale deed dated 26.05.1970 (Ex. D3) set up by the defendants has been proved. It was further observed that the plaintiff(s) have pleaded that defendants in the earlier suit instituted by them had submitted in their written statement about the factum of sale deed dated 26.5.1970, but the said sale deed has not been challenged by the plaintiff(s).

It being so, it was held that the claim of the plaintiff(s) regarding ownership is not proved and consequently, the suit was dismissed and the findings were upheld by lower Appellate Court.

I am of the view that both the Courts below have recorded the findings of facts that defendants are held to be owner of the suit land on the basis of sale deed dated 26.5.1970 (Ex. D3) set up by them in the written statement, which is prior to date than the sale deed set up by the plaintiff(s). No law point arises. The mutation does not confer title. The title is conferred by the sale deed only. It being so, I do not find any illegality or infirmity in the findings recorded by both the Courts below.

In view of above, present regular second appeal stand dismissed.

(KULDIP SINGH)
JUDGE

5.2.2018
sarita

Whether speaking / reasoned
Whether Reportable:

Yes/No
Yes/No