

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-4316-2019 (O&M)

Date of decision: 19.09.2019

Paramjit Singh and others

..... Appellants

Versus

Gurbachan Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. LS Bhangu, Advocate for the appellants.

RAMENDRA JAIN, J. (ORAL)

Through this regular second appeal, appellant-defendants, have laid challenge to judgment and decree of lower Appellate Court dated 30.04.2019, whereby suit of respondent-plaintiff for possession and permanent injunction qua property detailed in head note of judgment of trial Court was decreed in *toto*, reversing the judgment and decree of trial Court dated 13.10.2016.

Briefly, respondent-plaintiff claiming himself to be the owner of suit property, on the basis of sale certificate dated 23.11.1967 (Ex. P-1/Ex. P-2) and site plan (Ex. P-3) filed a suit for possession and permanent injunction against appellant-defendants to restrain them to sell, transfer or alienate the same, pleading that, he had permitted his nephew-Balkar Singh, husband of defendant No. 1-Manjit Kaur (deceased) and father of appellants herein, to live in the suit property as

licencee, who died around four years back prior to filing of instant suit. After his death, appellant-defendants, being his LRs, continued in possession of suit property as licensee. However, with dishonest intention appellant-defendants tried to alienate the same.

The suit was hotly contested by appellant-defendants.

Learned trial Court, after holding trial, dismissed the same, vide judgment and decree dated 13.10.2016.

Being aggrieved, respondent-plaintiff filed appeal before lower Appellate Court, who vide impugned judgment and decree dated 30.04.2019, decreed the suit of respondent-plaintiff in *toto*, reversing the judgment and decree of trial Court dated 13.10.2016.

Learned counsel for appellant-defendants *inter alia* contends that PW-3 Faqir Singh, own witness of respondent-plaintiff has admitted that his brother-Munsha Singh i.e. grand father of appellant-defendants had constructed a separate house, after migration from Pakistan and was living therein. After his death, suit property was inherited by Balkar Singh and upon his death by appellant-defendants. Learned lower Appellate Court failed to appreciate that respondent-plaintiff could not connect the suit property with sale certificate dated 23.11.1967 (Ex. P-1/Ex. P-2), inasmuch as, in the aforesaid sale certificate, dimensions of the property which was conveyed to respondent-plaintiff were not mentioned. Simply mentioning of area of 900 Sq. feet, by in itself, did not connect the suit property with aforesaid sale certificate. Learned lower Appellate Court also failed to appreciate that the house in which forefathers of appellant-defendants were residing since the year

1947, could not have been constructed on a plot purchased in the year 1967.

Having given thoughtful consideration to the submissions of learned counsel for the appellants, this Court finds the instant regular second appeal merits dismissal, for the reasons to follow:

As soon as, respondent-plaintiff proved his title over the suit property by producing sale certificate dated 23.11.1967 (Ex. P-1/Ex. P-2) and site plan Ex. P-3, depicting boundaries, it was for the appellant-defendants to rebut those documents, but they miserably failed to do so. Throughout stand of appellant-defendants was that the property pertaining to sale certificate (Ex. P-1/Ex. P-2) and site plan (Ex. P-3) was distinct from the suit property. Therefore, it was mandatorily required for them to rebut the sale certificate of respondent-plaintiff by leading cogent and convincing evidence. It was though very easy for them to prove the same by production of any property tax receipt, Ration card or any other document in their favour issued by any authority of the Government, depicting property number in which they were living as owners, distinct to the property claimed by respondent-plaintiff, but, they did not adopt any such exercise intentionally and deliberately knowing well that the suit property over which respondent-plaintiff had claimed his right was the same property in which they were living as licensee. In the absence of production of any such document, bald un-corroborated claim of appellant-defendants that property conveyed to respondent-plaintiff vide sale certificate (Ex. P-1/Ex. P-2) was altogether different, has rightly been ignored and rejected by the Appellate Court.

The relationship in between the parties is so closed in which normally no writing is ever get executed, as a matter of mutual understanding.

No question of law much less substantial has been raised in the instant regular second appeal. Hence, the same is held not maintainable.

I have carefully gone through the judgment and decree of lower Appellate Court and find no illegality or perversity in the same.

Dismissed.

September 19, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No