

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2745 of 2009(O&M)
Date of Order: 26.03.2019

Surja

..Appellant

Versus

Subh Ram (since deceased) through his LRs

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.A.Sheoran, Advocate
for the appellant.

Mr. Kuldeep Khandelwal, Advocate
for the respondent(s).

ANIL KSHETARPAL, J(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below decreeing a suit for permanent injunction for restraining the defendant to interfere in his peaceful possession.

At the time of admission, following substantial question of law was framed:-

“Whether the unregistered exchange deed (Ex.P-7) could be read in evidence?”

Plaintiff claimed that his predecessor had received in exchange a plot in question in lieu of 2 bighas land handed over to late Sh. Addu son of Mukh Ram situated in village Khera Tharu.

Defendant on the other hand, claimed that he had purchased the property from Smt. Naginee Devi widow of Bhagat Ram @ Ram Bhagat

vide registered sale deed dated 09.06.1999 for a sum of Rs.40,000/-.

Both the courts on appreciation of the evidence have found that the plaintiff is proved to be owner in possession of the property.

This court has heard learned counsels for the parties at length and with their able assistance gone through the judgments and decrees passed by the courts below and the record.

Learned counsel appearing for the appellant has submitted that the Registration Act, 1908 (hereinafter referred to as 'the Act of 1908') was enforced with effect from 18.12.1908 and as per Section 17(1)(b) of the Act of 1908, any non-testamentary document which creates right, title or interest in the property is not permissible unless it is registered. Hence, he submitted that the document Ex.P7 which is alleged document of exchange is not admissible in evidence. He has also pointed out certain contradictions in the oral evidence to support his case.

On the other hand, learned counsel appearing for the respondent has submitted that Section 17(1)(b) of the Act of 1908 would apply only if it is proved that value of the property was Rs.100/- or upward. He submitted that there is no evidence to that effect. He further submitted that it is a vacant piece of land and the possession follows ownership. He further submitted that the defendant claims title from Smt. Naginee Devi widow of Bhagat Ram @ Ram Bhagat, however, no evidence has been produced to prove title of his vendor.

As regards first argument of learned counsel, the answer has correctly been given by learned counsel for the respondent. The non testamentary document which creates right, title or interest in the immovable property worth Rs.100/- or upward only requires registration.

Hence, in the absence of evidence that the property in the year 1910 was worth more than Rs.100/-, the document Ex.P7 cannot be declared to be inadmissible. In the States of Punjab, Haryana and UT Chandigarh, relevant provisions of the Transfer of Property Act dealing with exchange have not been extended and therefore, even oral exchange is permissible. No doubt, if the exchange is in writing and the value of the property is more than Rs.100/-, it requires compulsorily registration as held by this court in the case of Satyawan and others vs. Raghbir, AIR 2002 (Pujab), 290. However, in the present case in absence of evidence that value of the property was Rs.100 or more, the document was not required to be registered.

Learned counsel for the appellant further submitted that the plaintiff has not appeared in evidence and he has appeared only through General Power of Attorney. Hence, he submitted that the court must draw adverse inference. It has come in evidence that the plaintiff is very old apart from being hard of hearing. In such circumstances, the plaintiff is a person who has given his attorney to Didar Singh. It has been written in the power of attorney that he is unable to walk and he cannot properly see or hear. In such circumstances, the evidence of the power of attorney cannot be ignored. Still further, the case is based upon documentary evidence and in the presence of sufficient evidence, it is not permissible for the court to draw adverse inference.

It has also been rightly contended by learned counsel for the respondent that the defendant-appellant derives his title from Smt. Naginee Devi widow of Bhagat Ram @ Ram Bhagat, however, the defendant-appellant has failed to lead any cogent evidence proving the title of his

vendor. It is fundamental that, if a party claims or derives title on the basis of sale deed, he or she is required to prove the title of the vendor which in the present case defendant-appellant has failed to prove.

Learned counsel for the appellant has tried to point out certain minor discrepancies in the statement of the witnesses produced by the plaintiff.

In the considered view of this court such minor discrepancies are not going to effect the result of the case. In substance, the case is dependent upon Ex.P7 and accompanying lay out plan Ex.P8 which have been proved. Plaintiff has also examined PW3-Dev Karan, Nambardar, who is great grand son of Nathu Ram, who was the attesting witness of the document, Ex.P7.

In view thereof, the question of law framed at the time of admission is answered in favour of the plaintiff-respondent and against the defendant-appellant.

The regular second appeal is dismissed.

March 26, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No