

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2691-2018 (O&M)

Date of decision: 04.09.2019

Gurmail Singh

...Appellant

Versus

Bharti Dutt and another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. M.K. Singla, Advocate,
for the appellant.

JAISHREE THAKUR, J.

1. This is a regular second appeal that has been filed seeking to challenge the judgment and decrees dated 09.11.2016 and 21.11.2017, passed by Civil Judge (Jr. Divn.), Sunam and Addl. District Judge, Sangrur, respectively, whereby the suit of the plaintiff-appellant for permanent injunction stood dismissed.

2. The facts that can be culled out are that the plaintiff claimed to be in possession of a house in question shown in red colour in the site plan, situation within red line of village Nangla for the past 25-30 years. It was stated that since the house in question was in dilapidated condition, they shifted into a newly constructed house, however, his household articles were still lying within the said premises. It was stated that the plaintiff was

in lawful and peaceful possession since long and the defendant-respondents had no concern with the said property but were threatening to take possession of the disputed house forcibly dispossessing the plaintiff. Aggrieved by their action, a suit for permanent injunction was filed.

3. On notice, defendants-respondent appeared through their counsel, filed written statement contending that the plaintiff-appellant was neither owner, nor in possession over the disputed property. It was stated that they had been put in the house in question by Bhagwan Kaur @ Bhano Kaur, widow of Tara Singh, who had sold it for a sum of ₹ 3,25,000/- vide agreement to sell dated 08.07.2015. It was also denied that the plaintiff had remained in possession of the house in dispute while further taking the plea that the plaintiff had already sold of his ancestral property by an agreement dated 31.08.2010.

4. Replication was filed wherein the averments of the written statement were denied while those of plaint were reaffirmed.

5. From the pleadings of the parties, the trial Court framed the following issues :-

- 1. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP*
- 2. Whether the plaintiff has concealed the material facts and not come to the court with clean hands?OPD*
- 3. Whether the plaintiff has no locus standi to file the present suit?OPD*
- 4. Whether the suit of the plaintiff is in limitation?OPD*

5. Relief.

5. In order to prove his case, Gurmail Singh-plaintiff stepped into the witness box as PW-1 and examined Major Singh, Draftsman as PW-2. Besides the oral evidence, the plaintiff also sought to rely upon photographs of the disputed house as well as a photo copy of his voter identity card, Aadhar card, which were on the record as Ex. P-1 to P-3 and mark 'A', mark 'B' and mark 'C' respectively.

6. The defendants examined Maninder Singh, Draftsman as DW-1, who deposed that he had prepared the site plan of the disputed house and defendant No.1 Bharti Dutt deposed as DW-2 reiterating the averments of the written statement. He also relied upon the agreement dated 08.07.2015 executed by Bhagwan Kaur in his favour as Ex. D-5. The Marginal witness to the agreement dated 08.07.2015 executed by Bhagwan Kaur in favour of the respondents appeared as DW-3, who specifically stated that Bhagwan Kaur had sold of the suit property to the defendants vide agreement dated 08.07.2015 for a sum of ₹ 3,25,000/-. He also identified his thumb impression as well as signatures of the other witnesses.

7. The Trial Court on appreciation of the evidence came to hold that the plaintiff has not been able to prove his possession over the suit property. It was contended that Aadhar card and voter identity card were never duly exhibited and only photo copies of the same had been produced on the record. The appeal against the said judgment and decree was dismissed too.

8. Learned counsel appearing on behalf of the appellant-plaintiff

argues that the agreement to sell dated 08.07.2015 executed in favour of respondent-defendant No.1 is an unregistered and unstamped document which does not confer any right in favour of defendant No.1 since it is a document that is required to be registered under the Registration Act. Counsel relies upon the judgment rendered by the Supreme Court in ***Avinash Kumar Chauhan vs. Vijay Krishna Mishra, 2009(1) RCR (Civil) 615***, wherein it has been held that : “*Unstamped document is neither admissible in evidence for recovery of consideration money nor for specific performance nor for any collateral purpose.*” It is argued that the very basis of dismissing the suit was on account of the fact that both the Courts below have taken into consideration the document, namely, Ex. P-1 which is an agreement to sell, which document could not be relied upon. It is further contended that he had produced two documents on the record, namely, Aadhar card and voter identity card to show that he was residing in the property in dispute.

9. I have heard learned counsel for the appellant and have gone through the judgments passed by both the Courts below.

10. There is no dispute with the proposition that a document which confers any right in favour of a person pertaining to immovable property valued more than ₹ 100/- is to be compulsorily registered. However, it is also a fact that the plaintiff-appellant is a *dominus litis* and he has to prove his case by standing on his own legs, he cannot take any advantage of the weakness of the case of the defendants, and it is only then would he be entitled to the injunction as prayed for. The appellant has not been able to

prove the fact that he remained in possession of the said property or that he was owner. Counsel for the appellant tries to rely on documents, namely, Aadhar card and voter identity card on record, however, both these documents were never duly exhibited before the Courts below. What is interesting to note is that the plaintiff-appellant has not disputed his relationship with Bhagwan Kaur @ Bhano Kaur, who had entered into the agreement to sell the suit property to the defendants-respondents herein. In fact, he had identified his mother's signatures. Plaintiff-appellant in his evidence had admitted that Bhagwan Kaur @ Bhano Kaur, his mother along with his brother were residing separately while further admitting that he was living in separate residence other than the suit property.

11. In view of the above, the plaintiff-appellant has wholly failed to establish the fact that he was either owner of the suit property or he was in possession of the same.

12. Resultantly, the learned counsel for the appellant-plaintiff has failed to point out any jurisdictional error or patent illegality apparent on the record of the case in either of the impugned judgments passed by the learned Courts below. He also failed to put into service any substantive argument, so as to convince this Court to take a different view than the one taken by the learned Courts below. The learned Courts below have recorded concurrent findings of facts. Thus, there is no scope for interference at the hands of this Court, while exercising its jurisdiction under Section 100 CPC because there is no question of law, much less substantial question of law thereof, found involved in the instant appeal.

13. The Regular Second appeal is dismissed being without merit.

04.09.2019

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.