

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.3896 of 2018 (O&M)

Date of decision: 29.03.2019

Mohinder Singh

..... Appellant

Versus

Gurdev Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Vanita Sapra Kataria, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-10124 & 10126-C-2018

Both the applications are allowed and the delay in filing/re-filing the appeal are condoned.

Main Case

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below dismissing the suit filed by him for permanent injunction.

Plaintiff and the defendant are brothers. The dispute is whether the property was purchased vide sale deed dated 30.06.1993 by the plaintiff or the defendant. The plaintiff claims that the original sale deed incorporates the name of the plaintiff but since the same is lying in the cupboard in the property in dispute, therefore, he is unable to produce. The defendant on the other hand, claims that through the sale deed, he had purchased the property and not the plaintiff and in fact, the plaintiff has forged a photocopy of the sale deed by adding his name.

During the pendency of the suit, the plaintiff filed an application for production of the documents to which a reply was filed by the defendant with the averments that the sale deed was in his possession but the same is not traceable. Learned Court passed the following order:-

“The present order shall dispose of an application for production of documents filed by the plaintiff for production of original sale deed and detailed reply was filed by the defendant with the averments that sale deed is not traceable at present though the same was very well in the possession of defendant at the time of filing of written statement. Accordingly, defendants are hereby directed to bring the original sale deed on record on or before framing of issues failing which adverse inference shall be drawn against them, defendants are further directed to furnish averments qua non traceability of sale deed vide affidavit on the date fixed. Now to come up on 7.5.10 for consideration on stay matter.”

The plaintiff only produced the photocopy of the sale deed which was marked as Mark 'A'. In order to resolve the controversy, Civil Court requisitioned the original record from the office of the Sub-Registrar. From the record, it came to the notice of the Court that the name of the purchaser in the main part of the sale deed has been correctly written and there is neither any cutting nor there is any erasing, however, where the recital of the sale deed comes to an end, name of the defendant has been written after erasing something. When the official from the office of the Sub-Registrar was examined, he specifically stated that there is no erasing or cutting in the name of the purchaser i.e. the defendant. Still further, the attention of the witness was not drawn to the endorsement which is made by the Sub-Registrar while registering the document. The name of the seller and the purchaser are also written there.

Once there is no erasing or cutting at the place where name of the defendant has been mentioned as purchaser, the Court has rightly held that the plaintiff failed to prove his case. Still further, the plaintiff had come to the Court claiming ownership. The onus was on him to prove that fact.

Learned counsel appearing for the appellant submitted that the Court should have drawn adverse inference against the defendant since he did not produce the original sale deed.

This Court has considered the submission, however, does not find substance because defendant at the very first opportunity had taken a stand that the original sale deed is not traceable. As such, no adverse inference could be drawn against the defendant.

Learned counsel for the appellant further submitted that the defendant has not produced in evidence, therefore, the Court erred in refusing to draw adverse inference. This Court has considered this submission also, however, once the record maintained by the Sub-Registrar has been produced, there was sufficient evidence which proves that the defendant is owner of the property.

In view thereof, there is no ground to interfere.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed.

29.03.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No