

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 9916 of 2018 (O&M)

Date of decision: 17.12.2019

Puran Chand

...Appellant

V/s.

Smt. Phool Pati and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. V.D.Sharma, Advocate for the appellant.

RITU BAHRI, J. (Oral).

CM-19232-C-2018

For the reasons mentioned in the application, the same is allowed and the delay of 11 days in refiling the appeal is condoned.

RSA-9916-2018

The appellant/plaintiff has come up in appeal against the judgments of the trial Court dated 10.10.2014 and lower appellate Court dated 30.05.2018 whereby his suit for recovery of possession of plot measuring 5 marlas i.e. 148 square yards comprising in khasra No. 1198 as per the details given in the head note of the plaint, has been dismissed by both the Courts.

The case of the plaintiff was that he is owner of khasra No. 1198 which was earlier owned by Sadhu Ram, real uncle of plaintiff who expired issueless and plaintiff and defendant No. 2 being his legal heirs became owners in possession of the suit land. He further asserted that by mutual partition dated 10.01.2005, plaintiff became exclusive owner of the suit land. There was a boundary wall and one room at the suit land which

was used by the plaintiff. Manphool and his son were trying to dispossess the plaintiff. In this backdrop suit for permanent injunction was filed on 21.07.2006 but after filing of that suit, on 23.07.2006, defendants demolished his room and raised their construction. Plaintiff moved an application dated 25.07.2006 to appoint local commissioner and thereafter the suit was amended to claim relief of mandatory injunction as well. That civil suit No. 431 of 05.08.2009 was dismissed on 10.02.2011 with liberty to file a fresh suit for recovery of possession. In this backdrop, the present suit was filed.

On notice of the suit, defendants No. 1, 3 and 4 appeared and filed their joint written statement taking the preliminary objection that suit is barred under Order 2 Rule 2 CPC since the earlier suit on the same cause of action was dismissed on 10.02.2011. Following issues were framed by the trial Court:-

- “1. Whether plaintiff is entitled for decree of possession as prayed for on the grounds taken in the plaint? OPP.
2. Whether the suit is not maintainable in the present form? OPD.
- 2(a). Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.
- 2(b). Whether the present suit is barred under Order 2 Rule 2 and under Section 11 of CPC? OPD.
- 2(c). Whether the plaintiff has no locus standi to file the present suit? OPD.
- 2(d). Whether the plaintiff has affixed deficient court fees on the memo of plaint? OPD.
3. Relief.”

Issue Nos. 1, 2, 2(a) and 2(b) were decided together.

The case of the plaintiff was that he is owner of the suit land and there is no registered sale deed in favour of the defendants.

The case set up by the defendants was that one Sadhu Ram was the previous owner of khasra No. 1198 measuring 5 marlas. This land was allotted to members of Harjan caste and could not have been sold vide registered sale deed. The previous owner died issueless and plaintiff and proforma defendant No. 2 became owners in possession of the suit land. Defendant No. 10 expired and his legal heirs were on the record. Mutation No.11517 dated 19.09.2013 was sanctioned. The case of the defendants was that earlier civil suit No. 431 of 05.08.2009 filed by the plaintiff was for permanent injunction and mandatory injunction against the defendants that they be restrained to take possession of plot measuring 5 marlas in khasra No. 1198. This suit was dismissed on 10.02.2011 and finding had come that plaintiff was never in possession of the suit land. The defendants further placed on record original writing dated 27.06.2003 (Ex.D1 and in the present suit as Ex.D7) which was executed in presence of witnesses and possession was given to the defendants as the plaintiff had received Rs.32,000/- as sale consideration. This original writing dated 27.06.2003 (Ex.D1) had been examined while dismissing the civil suit No. 431 of 05.08.2009. The plaintiff while appearing as PW1 had also admitted that the defendants were in possession of the plot in dispute.

Learned counsel for the appellant has produced copy of the judgment passed in civil suit No. 431 of 05.08.2009 which was dismissed on 10.02.2011. In para 18 of this judgment, it has been observed that writing dated 27.06.2003 was not a registered document but this writing was fully proved as Ex.D1 by the evidence of DW1 who was scribe and DW3

Dr. Inderjit Singh, Hand-writing & Finger print expert. DW3 fully proved that there were thumb impressions of Puran on writing dated 27.06.2003 as Ex.D1. DW1 stated that Puran (plaintiff) had sold the plot in dispute on 27.06.2003 vide writing dated 27.06.2003. From the perusal of the writing dated 27.06.2003 as Ex.D1, it was clear that plot in dispute was sold for sale consideration of Rs.32,000/- which was paid by Manphool to the plaintiff and possession was delivered as well. The suit was dismissed on 10.02.2011 keeping in view the possession and writing dated 27.06.2003 (Ex.D1). Even if the liberty was granted to the plaintiff to file fresh suit for possession, the question of suit being barred by Order 2 Rule 2 CPC had been considered by the trial Court. The trial Court, while referring the judgment passed by this Court in *Ude Singh and others V/s. Ram Chander* 2009(1) R.C.R. (Civil) 41, dismissed the suit being barred by Order 2 Rule 2 CPC and under Section 11 CPC as well.

No substantial question of law is pending for consideration as issue with regard to possession had already been decided in favour of the defendants and attained finality by the trial Court while dismissing the earlier suit No. 431 of 05.08.2009.

With these observations, appeal is dismissed.

(RITU BAHRI)
JUDGE

17.12.2019
Divyanshi

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