

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1139 of 2018 (O&M)

Date of decision : 15.5.2019

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Balger Singh and others

.....Appellants

vs.

Lakha Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. K.B.S. Mann, Advocate for the appellants

Mr. B.D. Sharma, Advocate for the respondents

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H. S. Madaan, J.

Briefly stated facts of the case are that plaintiffs Lakha Singh son of Karnail Singh and Rashpal Singh son of Lakha Singh had brought a suit for declaration against defendants Mohinder Kaur widow, Bakshish Singh son of Gurnam Singh, Balger Singh s/o Sohan Singh, Kewal Singh and Manjit Singh sons of Balger Singh, seeking a declaration that plaintiffs are owners in possession of land measuring 8 kanals situated at village Dhadde, Tehsil and District Amritsar, detailed in the plaint, on the basis of registered sale deed dated 28.11.2003, executed by defendants No. 1 and 2, in their favour alongwith Aar (Khal) i.e. water channel and passage, besides seeking

consequential relief of mandatory injunction directing the defendants to leave the passage for ingress and egress of the plaintiffs for the agricultural land of 8 kanals purchased by the plaintiffs from defendants No.1 and 2 and not to block the passage in any manner. According to the plaintiffs, defendants No. 1 and 2 being owners in possession of the 8 kanals of land out of the joint land measuring 57 kanals 2 marlas being 160/1142 share, situated at village Dhadde, Tehsil and District Amritsar, had sold the same to the plaintiffs vide a registered sale deed dated 28.11.2003; that at the time of execution of the sale deed by defendants No. 1 and 2 in favour of the plaintiffs, the possession of land alongwith Khal and passage was also delivered to the plaintiff purchasers; that plaintiffs have been using the passage and khal since then. Defendants No. 1 and 2 were left with no right or interest in the sold land alongwith khal and passage but when defendants No. 1 and 2 sold the passage to defendants No. 3 to 5, they refused to admit the request made by the plaintiffs, hence the suit in question.

On notice, defendants No. 3 to 5 appeared and filed a written statement contesting the suit raising various preliminary objections, on merits contending that defendants No. 1 and 2 vide sale deed dated 27.6.2006, have sold the entire land falling in their share to the answering defendants for a sum of Rs.1,09,500/- but that did not include any passage. However, in the sale deed executed by defendants No. 1 and 2 in favour of defendants No. 3 and 5 there is no mention that there is any passage for benefit of the plaintiffs, as such answering respondents are not liable to provide any passage to

the plaintiffs. Refuting the remaining allegations, the answering defendants prayed for dismissal of the suit.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiffs are entitled to declaration as prayed for? OPP
2. Whether the plaintiffs are entitled to relief of mandatory injunction as prayed for? OPP
3. Whether the suit is under valued for the purposes of Court fee and jurisdiction? OPD
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Relief.

In order to proof their case, plaintiff No.1 Lakha Singh examined himself as PW-1, Jaspal Singh and closed the evidence after tendering certain documents.

On the other hand, the defendant No.1 Kewal Singh himself appeared as DW-1 and examined Resham Singh Deed Writer as DW-2 and thereafter closed their evidence after tendering certain documents.

After hearing the counsel for the parties, the trial Court, decided issues No. 1 and 2 in favour of the plaintiffs and against the defendants. Issues No. 3 and 4 were decided in favour of the plaintiffs and against the defendants. Accordingly, suit of the plaintiffs was decreed vide judgment and decree dated 18.5.2016, declaring plaintiffs to be owners in possession of the land as

mentioned in the Head note on the basis of sale deed dated 28.11.2003, executed by defendants No. 1 and 2 in favour of the plaintiffs alongwith Aar (Khal) and passage. The defendants were directed to leave the passage for ingress and egress of the plaintiffs for the agricultural land of the plaintiffs and not to block the same.

The concerned revenue official was further directed to demarcate the Aar and the passage and to make entry regarding the same in the revenue record after proper verification and inspection of the site.

The defendants felt aggrieved by the judgment and decree passed by the trial Court and they had approached the Court of District Judge, Amritsar, filing an appeal. The said appeal was dismissed vide judgment and decree dated 27.2.2017, as such the defendants have knocked at the door of this Court, by way of filing the present regular second appeal, notice of which was given to the respondents, who have put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record.

Both the Courts below on analysis of the evidence produced by the parties in light of the facts and circumstances of the case, have come to the conclusion that in the sale deed Exhibit P1 executed by defendants No. 1 and 2 in favour of the plaintiffs, it is clearly mentioned that Aar and passage to be 'sarkari' and all other rights had been transferred in favour of the plaintiffs and mutation in that regard had been sanctioned and further the property of plaintiffs is located within the property of defendants and there is no other

passage available to the plaintiffs to reach their property. Therefore, the trial Court was justified in decreeing the suit filed by the plaintiffs and learned District Judge had correctly dismissed the appeal against the judgment and decree passed by the trial Court, affirming the judgment and decree passed by the trial Court and I do not see any infirmity in the same.

The judgments and decree passed by the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein which might have called for interference by this Court in Appellate jurisdiction. Furthermore, no substantial question of law arises in the present appeal.

Thus the appeal is found to be without any merit and the same stands dismissed.

15.5.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No