

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 1525 OF 2017 (O&M)
DATE OF DECISION : 18.02.2020

Anil Kumar

...Appellant

versus

Rameshwar Dass & Anr.

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ram Pal Verma, Advocate,
for the appellant.

ARUN MONGA, J.

CM-3668-69-C of 2017

For the reasons stated in the applications, the same are allowed and delay of 11 days and 116 days in filing and re-filing the appeal stands condoned.

RSA-1525 of 2019

1. Plaintiff is in second appeal before this Court having suffered adverse concurrent findings by both the Courts below whereby his suit for declaration to the effect that the plaintiff is owner in possession of ½ share of the suit property with consequential relief of permanent injunction restraining his father-defendant No.1 and brother-defendant No.2, was dismissed.

2. Brief facts, as pleaded by the plaintiff, are that his grand-father Late Sh. Ram Narain had purchased the suit property with his own funds

and is ancestral in nature, qua the parties. The said property is stated to be on lease from Municipal Corporation, Sonapat. After purchase of the said property by Late Sh. Ram Narain, the same was got entered into the name of his son i.e. defendant No.1. A family settlement took place between the parties and Late Sh. Ram Narain in the year 1994. Pursuant thereto the suit property fell in equal share to the plaintiff and defendant No.2 i.e. grandsons of Late Sh. Ram Narain. It is also pleaded that Late Sh. Ram Narain had executed a will dated 20.10.1994 in favour of plaintiff and defendant No.2. In the premise, during lifetime of their grandfather i.e. Late Sh. Ram Narain, plaintiff and defendant No.2 became owners by virtue of family settlement and have been in possession of the suit property. Defendant No.1 being father of plaintiff and defendant No.2 is living with them in the suit property. However, defendant No.1(plaintiff's father) in collusion with defendant No.2(plaintiff's brother) taking advantage of wrong entries in the lease record threatened plaintiff to alienate the suit property. Hence, the suit was filed.

3. The defendants in their written statement pleaded that defendant No.1 is owner in possession of the suit property having taken the same on lease from Gram Panchayat in the year 1964-65 @ 2 paisa per square yards per year. Defendant No.1 is paying lease money in respect of suit property to Municipal Corporation, Sonapat. Electricity connection/meter were/ are also installed in the suit property in the name of defendant No.1 and house tax is also being paid by him. It is further averred that Late Sh. Ram Narain, father of defendant No.1 and grandfather of plaintiff and defendant No.2 had no right, title or interest in the suit property. The ancestral nature of the suit property was also denied by defendants After

taking the same on lease, defendant No.1 constructed a house on the leased suit land and named it as "Sharma Kutir". Additionally, it is pleaded that defendant No.2 with his family is residing separately. The plaintiff without obtaining divorce from his first wife married another woman and even a child is born out of the second wedlock. Defendant No.1 averred that qua the suit property he had already registered a will dated 20.11.2003 in favour of his grandsons.

4. Based on the pleadings of parties, following issues were framed:-

1. *Whether the grandfather of the plaintiff Sh. Ram Narain purchased the property from his own funds? OPP*
2. *Whether the suit property is ancestral? OPP*
3. *Whether the suit property fell to the share of the plaintiff and defendant no.2 in equal share in a family statement? OPP*
4. *Whether Ram Narain executed a will dated 20.10.1994 in favour of plaintiff and defendant? OPP*
5. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
6. *Whether the plaintiff has no locus standi to file the present suit? OPD*
7. *Whether the plaintiff has no cause of action to file the present suit? OPD*
8. *Whether the plaintiff has concealed the material facts? OPD*
9. *Whether the defendants are entitled to special costs U/s 35-A CPC? OPD*
10. *Relief*

in support of their pleadings to discharge their respective onus as per the issues *ibid*.

6. After analyzing the evidence produced by the parties, the trial Court vide judgment and decree dated 06.12.2013 dismissed the suit. Plaintiff filed first appeal which too was dismissed by reaffirming the findings returned by the trial Court vide judgment and decree dated 25.03.2016. Hence, the instant regular second appeal.

7. I have heard learned counsel for the appellant and have perused the judgments passed by the Courts below vis-a-vis the grounds of appeal taken before this Court.

8. Plaintiff claimed that his grandfather Sh. Ram Narain had purchased the suit property during his life time and being owner thereof he had transferred the same in favour of plaintiff and defendant no.2 vide registered will dated 20.10.1994 (Ex.P5). However, the said will does not mention description of suit property specifically. No evidence was brought on record by the plaintiff to show that his grandfather was owner in possession of the suit property. As regards the family settlement pleaded by the plaintiff, no cogent evidence was adduced. On the other hand, defendant no.1 specifically denied the family settlement between the parties.

9. Furthermore, Municipal Committee record shows that defendant No.1 was paying the house tax of the suit property for a long time. Plaintiff relied upon mutation no. 956 according to which plaintiff and defendant no.2 inherited the land measuring 38 *kanals* 17 *marlas* after death of their grandfather. To be noted that said mutation does not pertain to or mention about inheritance of the suit property in favour of plaintiff and defendant No.2 on the demise of their grandfather. No evidence has been produced on

record by the plaintiff that he either is owner of the suit property or the suit property is ancestral in nature, as claimed by him. Possession of the plaintiff over the suit property has also not been proved based on the evidence adduced by him. The plaintiff has to stand on his own legs and he seems to have miserably failed to discharge the onus of proof placed on him, as per issues framed by the trial Court. To my mind, suit was, therefore, rightly dismissed by the trial Court.

10. It seems that the first Appellate Court also rightly dismissed the appeal observing that plaintiff cannot take advantage of weakness of the defendants and he has to stand on his own legs by adducing evidence in support of his claim. Learned First Appellate Court rightly observed that there is no evidence on record to show that plaintiff is either owner of the suit property or the suit property is ancestral in nature or he is in possession thereof or his grandfather was owner of the property or there was any family settlement whereby half share of the suit property was assigned to him. The appeal, therefore, was rightly dismissed.

11. In my opinion, the conclusions drawn by the learned trial Court and the learned first Appellate Court are in consonance with the record and facts of the case. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below on appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

12. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate

jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

13. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

14. Pending applications stand disposed of.

15. No order as to costs.

(ARUN MONGA)
JUDGE

FEBRUARY 18, 2020

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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | <i>Whether reportable :</i> | <i>Yes/No</i> |