IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA NO. 4347 OF 2018 (O&M)
DATE OF DECISION : 03.02.2020

Ranjit @ Jeeta

...Appellant

versus

Kani Ram and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. N. D. Achint, Advocate,
for the appellant.

ARUN MONGA, J. (ORAL)

CM NOs.11519-11520-C-2018

For the reasons stated in the applications, both are allowed and delay of 280 days in re-filing and 109 days in filing the appeal are condoned, subject to all just exceptions.

MAIN CASE

Having suffered concurrent adverse findings by the two Courts below, the appellant, is before this Court in second appeal. The Courts below dismissed the suit of plaintiff.

2. Brief facts as noticed by the Courts below are that plaintiff claimed himself to be owner in possession of the suit property measuring 16 marlas out of land comprised in Khasra No.348(1-12) situated within the revenue estate of village Banwala, Teshil Dabwali, District Sirsa. Plaintiff claims that he had purchased the suit land from the predeessor-in-interest of

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the defendnats for a sum of ₹57000/- and a writing to this effect was also scribed on 19.1.1998. The possession of suit land was given to him. Mani Ram, predecessor-in-interest of the defendants, duly thumb marked the said writing and his sons Amar Chand and Harlal also thumb marked the same. Other respectables of the village and Birma Devi, Sarpanch of the village also signed the said writing. As per the writing dated 19.01.1998, the predecessor-in-interest of the defendants promised to execute the sale deed and have it registered in favour of the plaintiff after getting the suit property partitioned as the same was joint with the plaintiff and his brothers to the extent of half share and remaining half share was owned by the predecessor-in-interest of the defendants. Mani Ram died leaving behind his five sons. No partition took place and as such, sale deed could not be executed. After sometime, two sons of deceased Mani Ram, namely Harlal and Devi Chand also died and thereafter other three sons of Mani Ram refused to execute and get the sale deed registered in favour of the plaintiff.

3. It was contended that plaintiff was always ready and willing to get the sale deed executed but the suit property was not partitioned. The defendants cannot be allowed to repudiate the fiduciary obligation arising out of the contract between Mani Ram and the plaintiff. Hence, the suit.

4. Defendants in their joint written statement stated that they were owners in possession of the suit land being legal heirs

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of deceased Mani ram. All other averments of the plaintiff were denied. It was further denied that possession of the suit land was ever given to the plaintiff.

5. Based on the rival pleadings of both the parties, following issues were framed :

1) Whether the plaintiff is entitled for a decree for declaration to the effect that plaintiff is owner in possession of the suit land as mentioned in the head note of the plaint and revenue record showing the defendants to be owner in possession to the extent of half share is wrong, null and void and liable to be set aside, as prayed for ? OPP

2) If Issue No.1 is decided in favour of the plaintiff, then whether plaintiff is also entitled for mandatory injunction directing the defendants to get the sale deed executed and registered in favour of the plaintiff with consequential relief of permanent injunction restraining the defendants from alienating the suit land and their interferring into the possession of the plaintiff over the suit land as mentioned in the head note of the plaint and as prayed for ? OPP

3) Whether the plaintiff has has no locus standi to file the present suit ? OPD

4) Whether the plaintiff has no cause of action to file the present suit ? OPD

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5) Whether the suit of the plaintiff is not maintainable in the present form ? OPD

6) Whether the suit of the plaintiff is bad for non joinder and mis-joinder of necessary parties ? OPD

7) Whether the Hon'ble Court has got no jurisdiction to try the present suit ? OPD

8) Whether the plaintiff has filed this false suit against the defendants so the defendants are entitled to get special costs from the plaintiff under Section 35-A CPC ? OPD

9) Relief.

6. The parties adduced their respective oral and documentary evidence, in support of their pleadings to discharge their onus in terms of the issues, *ibid.*

7. I have heard learned counsel for the parties and have perused the records.

8. Issues No.1 to 5 were decided by the trial Court against the plaintiff, while Issues No.6 to 8 were not pressed.

9. The trial Court observed that the alleged writing is result of fraud, is not binding upon and does not affect the rights of the defendants. The writing has no value in the eyes of law as the same is not even registered. PW1 Birma devi, Ex-Sarpanch, the alleged eye witness of the writing deposed that she put her

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thumb impression on the writing. During her cross examination, she admitted that the suit property was in possession of the defendants. PW2 Jaswant, son of the plaintiff, who is power of attorney of the plaintiff, deposed that neither any application nor any suit was filed for taking the possession of suit land. Therefore, possession of the plaintiff/appellant over the suit land was never proved. Plaintiff further examined Handwriting and Fingerprint Expert Anil Kumar, who deposed that the disputed thumb impressions and the specimen thumb impressions were identical and had been affixed by one person.

10. In order to prove their case, defendant Ram Singh stepped into the witness box as DW-1 and defendant Kani Ram as DW-2. Both the defendants deposed that the alleged writing was a result of fraud. They further pleaded that they are in possession of the suit property. The said fact was admitted by the son of plaintiff himself (PW-2), during his cross-examination.

11. Based on these findings, the suit was dismissed. The First Appellate Court also reiterated the findings and reasoning given by the trial Court and reaffirmed the judgment and decree passed by the trial Court. No fresh ground worthy of interference by this Court in the second appeal is made out.

12. There seems to be no perversity or illegality in the concurrent findings of facts recorded by both the Courts below. They seem in consonance with the record.

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13. Furthermore, neither any question of law much less substantial question of law, which is sine qua non for entering 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 Code of Civil Procedure.

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

15. The appeal stands dismissed accordingly. Resultantly, both the impugned judgments and decrees passed by the Courts below are upheld.

16. No order as to costs.

(ARUN MONGA)
JUDGE

FEBRUARY 03, 2020
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1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No

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