

IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

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RSA No.5996 of 2018 (O&M)

Date of Decision : 11.02.2020

Amar Singh

... Appellant

versus

Bahadur Singh

...Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. A.P.S. Shergill, Advocate
for the appellant.

RAJBIR SEHRAWAT, JUDGE (ORAL)

This is the second appeal filed by the unsuccessful plaintiff, challenging the concurrent judgment and decree passed by both the Courts below in a suit for possession of house as mentioned in the plaint.

Parties herein are referred to as the plaintiff and the defendant, as they were referred in the original suit.

The facts giving rise to the present appeal are that the appellant/plaintiff had filed the suit with an averment that the defendant is the real paternal uncle of the plaintiff. Since the residential house of the defendant and his son was under construction, therefore, they requested the plaintiff to permit them to use his house for keeping their wheat crop chaff. The plaintiff allowed the defendant to use his house for that purpose. Earlier the plaintiff was not requiring that house, therefore, he did not ask them to vacate the same. However, later on when the plaintiff intended to raise construction of a new house at the site, then he

requested to defendant to vacate the same. But, they have refused to vacate it and,

instead, have asserted that they are the owners of the suit property. Hence the present suit.

The defendant resisted the suit by contesting it on merits with the assertion that plaintiff has no concern with the suit property. Rather the father of the defendant had as many as 10 houses/properties. Therefore, there is no questions of the defendant asking the plaintiff to permit to use his place for the purpose mentioned in the plaint. In the inter se partition between the brothers of the defendant, the defendant have got his share in the property left behind his father. The defendant and his brothers have constructed their houses after the oral partition. The suit property had come to the share of the defendant in that partition. He is residing in the same as an owner, and is also tethering cattles and storing his wheat chaff in a part of the suit property.

For proving his respective assertions the plaintiff himself appeared as witness and examined PW-2 Naurang Singh. However, no documentary evidence was led. On the other hand, the defendant himself entered in the witness box as PW-1 and led in evidence document Ex.D2 to Ex.D5.

After considering the evidence led on file, the trial Court dismissed the suit filed by the appellant/plaintiff. Feeling aggrieved against the same, the plaintiff preferred appeal before the lower appellate Court. However, the same was also dismissed. Therefore the present appeal has been preferred.

Learned counsel for the plaintiff/appellant has submitted that to prove his case, the plaintiff himself has appeared as a witness and have examined the co-villager, as well. Therefore, he has duly proved his ownership qua the suit property. Both the Courts below have wrongly appreciated the evidence on file.

Having heard the learned counsel for the appellant and having perused the file, this Courts does not find any substance in the submission made by the

learned counsel for the appellant. The plaintiff tried to rely upon the document

Ex.P1, which is mentioned to be an agreement, however, even the same has not been duly proved before the Court in accordance with law. Although, both the Courts below have observed that this document is more in the nature of Will, however, even if the same is to be taken to be an agreement to sell, then also no title can be said to be accruing to the plaintiff on the basis of the said document.

Other than claiming the title on the basis of the above said document, no other basis has been pleaded by the plaintiff/appellant to claim the possession from the defendant. Admittedly, the possession of the suit property is with the defendant. Therefore, in absence of proof of the title in his favour, the plaintiff/appellant is not entitled to any decree for possession of the same. Hence, both the Court below have rightly dismissed the suit filed by the plaintiff.

No other argument was raised by the counsel for the plaintiff/appellant.

In view of above, this Court finds no merit in the appeal and the same is dismissed.

11th February, 2020

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**(RAJBIR SEHRAWAT)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No