

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-6270 of 2018 (O&M)

Date of decision: 20.02.2020

Lal Chand Joshi

... Appellant

versus

Santosh Kumar Joshi & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ravinder Malik(Ravi) , Advocate,
for the appellant.

ARUN MONGA, J.

1. Having been non-suited by the trial Court as well as first Appellate Court below, the plaintiff has approached this Court by filing the instant regular second appeal questioning the legality and propriety of judgments dated 12.10.2016 and 17.05.2018 respectively.

2. Plaintiff filed a suit and challenged the sale-deed dated 08.05.2012 executed by his brother-defendant No.3 in favour of defendant No.4 and consequent entries made on the basis thereof in the Municipality record, being illegal, null and void. It is claimed that defendant No.3 had executed a power of attorney in favour of plaintiff on 27.09.2008 in respect of portion of the house in question, which is joint ancestral property, after receiving Rs.1 lakh, as such defendant No.3 was not competent to execute the sale-deed in favour of defendant No.4 and it is a sham transaction.

3. Defendants No.4 and 5 only contested the claim of the plaintiff. They claimed themselves to be *bonafide* purchaser for valuable consideration. It is claimed that defendant No.3 had acquired the separate

ownership of suit property by way of mutual partition decree dated 05.09.2009 which he validly sold to them after receiving due consideration.

Any power of attorney allegedly executed by defendant No.3 in favour of plaintiff is stated to be an outcome of collusion between them, who are real brothers and to defeat the rights of contesting defendants.

4. On the basis of oral as well as documentary evidence led by the parties, the trial Court dismissed the suit. The appeal filed by the plaintiff also met with the same fate, leading to the filing of instant regular second appeal.

5. I have heard learned counsel for the appellant and have gone through the paper-book carefully. I am of the considered view that no interference is warranted.

6. In an earlier round of litigation between the brothers i.e. plaintiff and defendants No.1 to 3, it was held that parties are co-owners of the house in question. A preliminary decree was passed. However, before final decree could be passed, matter went before Lok Adalat, where the parties compromised the matter, as a result whereof final partition decree was passed on 05.09.2009 by the Lok Adalat. Thereby the shares of the parties in the house in question were defined and separated. The plaintiff candidly admitted in his cross-examination that he had entered into a compromise deed with his brothers/ defendants No.1 to 3 which culminated into a final partition decree dated 05.09.2009(Ex.P4). The same has since attained finality as it was never challenged by the plaintiff. It was, thus, rightly held that defendant No.3 was well within his right to alienate his share in the suit house and that the power of attorney purportedly executed by defendant No.3 do not confer any right upon the plaintiff to challenge

the sale-deed executed by defendant No.3 in favour of defendant No.4.

7. The trial Court as well as First Appellate court has rightly returned adverse findings against the plaintiff. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below.

8. 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.

9. 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.

10. Pending applications stand disposed of.

11. No order as to costs.

(ARUN MONGA)
JUDGE

February 20, 2020

Jiten

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No