

**111 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-855-2020 (O&M)

Date of decision : 09.08.2022

Kashmir Singh

...Appellant

Vs.

Hardev Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. P.S.Dhaliwal, Advocate for the appellant.

MANOJ BAJAJ, J.

CM-2753-C-2020

This application has been filed under Section 5 Limitation Act, 1963 for condonation of delay of 50 days in filing the appeal.

Heard.

For the reasons mentioned in the application, same is allowed and delay of 50 days in filing the appeal is condoned.

CM stands allowed.

Main case

Plaintiff (appellant) is aggrieved against the judgment and decree dated 09.08.2019 passed by the first appellate court in civil appeal No.548 dated 22.12.2017, whereby the judgment and decree dated 09.11.2017 passed in civil suit No.180 of 30.07.2012, dismissing his suit for permanent injunction filed against defendant/respondent, was affirmed.

Briefly, the facts of the case are that the suit property measuring 2 marlas (gair mumkin roori) was initially owned by Gurmukh Singh, Balbir Singh and Rattan Singh all sons of Kapur Singh and they had executed an agreement to sell dated 04.07.1991 in favour of the plaintiff, thereby agreeing to sell the suit property for a total sale consideration of Rs.3500/-. As per

pleadings, the entire sale consideration was paid to the vendors at the time of executing the agreement and the possession of the property was also handed over by them to the plaintiff, and since then he is continuously enjoying the said property. The defendant forcibly tried to dispossess the plaintiff, therefore, on this cause of action, he prayed for a decree of permanent injunction, restraining him from interfering in his peaceful possession of the suit property.

The defendant contested the suit by filing the written statement and denied the claim of the plaintiff by setting up title of suit property in his favour, on the strength of the sale deed dated 20.06.2011. As per the averments in the written statement, it was claimed that the revenue record in the shape of mutation dated 04.06.2011 reflected ownership of his vendors and the agreement to sell relied upon by the plaintiff is forged and fictitious. While denying the other averments, it was prayed that the suit be dismissed.

The plaintiff had filed the replication to controvert the contents of written statement and reiterated the averments contained in the plaint.

Thereafter, the trial Court framed the issues and after considering the evidence adduced by the parties, dismissed the suit vide judgment and decree dated 09.11.2017. Being dissatisfied with the judgment and decree dated 09.11.2017, plaintiff filed first appeal and the same was also dismissed vide impugned judgment and decree dated 09.08.2019. Hence this regular second appeal.

Learned counsel for the appellant has argued that the agreement to sell dated 04.07.1991 was executed by the vendors, whereby they had agreed to transfer the property in favour of the plaintiff and as the entire sale consideration stood paid, the possession was also handed over to him. He

submits that since then the plaintiff is enjoying the continuous possession over the suit property, but trial Court erroneously dismissed the suit by accepting the stand of the defendant and the appellate Court has also failed to appreciate the evidence on record in a correct manner, therefore, the interference is warranted by this Court. He submits that the plaintiff is at least justified in law to protect his possessory rights even if, he has failed to establish his title in relation to the suit property.

After hearing learned counsel, and analyzing the impugned judgment and decree, this Court finds that except for the bald averments that the plaintiff is in possession of the suit property, no other evidence was brought on record. The instrument dated 04.07.1991 does not confer any right or title upon the plaintiff, whereas the defendant has relied upon the mutation in favour of their vendors as well as the execution of sale deed by them on 20.06.2014, and apart from the nature of documentary evidence considered by the trial Court as well as the appellate Court, it was also observed that the plaintiff neither claimed specific performance of contract nor brought any evidence to prove his possession over the suit property. Thus, this Court has no hesitation in holding that the findings returned by both the Courts on material issues are founded upon correct appreciation of evidence and do not suffer from perversity.

Resultantly, finding no merit in this appeal, much less involvement of any substantial question of law, the same is dismissed.

09.08.2022

vanita

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned :

Yes No

Whether Reportable :

Yes No