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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1430-2022 (O&M)
Date of Decision:12.07.2022

Gurdial Singh

.. Appellant

Vs.

Labh Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Ramnish Puri, Advocate for the appellant.

...

Manoj Bajaj, J. (Oral)

Appellant (Plaintiff) has preferred this appeal to challenge the judgment and decree dated 16.03.2020 passed by the First Appellate Court, in Civil Appeal No.06 dated 03.01.2018, whereby it has upheld the judgment and decree dated 27.10.2017 passed in Civil Suit No.16 dated 04.03.2016 dismissing his suit for permanent injunction.

The facts in brief leading to the appeal are that the plaintiff filed a suit for permanent injunction against defendants with the averments that the property in question was initially owned by Veer Singh father of defendants, who had sold it to the plaintiff's grand-father, namely, Atma Singh and the instrument of sale deed dated 24.02.1985 (Ex.P1) was executed and a sale consideration of Rs.3,300/- was passed on to the vendor. After transfer of property, the plaintiff is in continuous possession of the same, and as the defendants have no right in the said property, but they are disturbing his possession, therefore, he prayed for a decree of permanent injunction, restraining the defendants from interfering with the possession of the plaintiff.

The defendants contested the suit by filing a written statement and raised preliminary objections relating to *locus standi*, mis-joinder of parties, maintainability of the suit etc. and on merits, the discrepancy in the measurement of the property was highlighted and it was specifically pleaded that the plaintiff was never in possession of the suit property. Lastly, it was prayed that the suit be dismissed.

Upon considering the pleadings of the parties, the trial Court framed various issues and thereafter, considering the pleadings and evidence of the parties, proceeded to decide the material issues against plaintiff and in favour of the defendants, and dismissed the suit vide judgment and decree dated 27.10.2017.

Aggrieved against the said judgment and decree dated 27.10.2017, the appellant preferred first appeal, however, the same was also dismissed. Hence this regular second appeal.

Learned counsel has argued that the continuous possession of the plaintiff upon the suit property is established and even if the findings of the Courts below relating to the instrument dated 24.02.1985 holding it to be inadmissible for want of compulsorily registrable in terms of Registration Act in 1908 is accepted, even then, the possessory rights of the plaintiff deserve to be protected. He submits that the site plan Ex.P-2 relied upon by the plaintiff is same as Ex.D-2 by the defendants, therefore, the non-description of khasra number etc. would lose significance in view of this documentary evidence. He prays that the findings returned by the Courts below warrant interference.

During the course of hearing, it is not disputed by the learned counsel that no documentary evidence relating to the construction of house,

electricity connection etc. is produced by him and in response, it is explained that the said suit property is being used for tethering the cattle.

Lastly, it is stated by the learned counsel that after the decision of the trial Court, the plaintiff has instituted another suit seeking specific performance of the contract on the basis of same instrument dated 24.02.1985.

After hearing the learned counsel, considering the pleadings of the parties and evidence on record, this Court finds that the findings returned by the trial Court and upheld by the Appellate Court are based upon proper appreciation of the same. Concededly, the alleged sale deed relied upon by the plaintiff was not registered, therefore, no valid title was passed on to his predecessor-in-interest. Apart from it, the suit property is a vacant plot and the plaintiff/appellant has failed to establish the usage of the said property for his own use, therefore, for lack of material evidence of his possession, his suit was bound to fail. It is not a case where the evidence on record has been misconstrued by the Addl. Civil Judge (Sr. Divn.), Baba Bakala Sahib or the First Appellate Court resulting in miscarriage of justice. Thus, this Court has no hesitation that there is no merit in this appeal, as it does not involve any substantial question of law.

Resultantly, the same fails and is dismissed.

12.07.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No