

132 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-888-2022
Decided on : 12.07.2022

Kuldip Raj @ Kuldip Singh

..... Appellant

Versus

Balvir Singh and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Munish Bhardwaj, Advocate
for the appellant.

Manjari Nehru Kaul, J.(Oral)

Suit for permanent injunction filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 04.02.2020. The appeal preferred against the aforesaid judgment and decree met the same fate before the learned Appellate Court and was dismissed. The appellant being aggrieved by the concurrent findings recorded by the Courts below is, now in Regular Second Appeal before this Court. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for permanent injunction to restrain defendant No.1 from alienating suit property situated in the red strip of village Sarhal Quazian Tehsil Banga District Shaheed Bhagat Singh Nagar (shown in red colour in the site plan annexed with the plaint) in favour of defendant No.2, since the plaintiff had become its owner in possession after defendant No.1 received token money of Rs.1,50,000/- from him.

Per contra, in the written statement filed by defendant No.1, he denied the possession of plaintiff much less he having any right or concern with the suit property. It was contended that since defendant No.1 was owner in possession of the suit property and hence, by virtue of the same he had agreed to sell it to defendant No.2 for a sale consideration of Rs.90,000/- vide an agreement to sell executed on 17.06.2016. Thereafter, on receipt of entire sale consideration, the possession of the suit land stood delivered to defendant No.2 by defendant No.1 and who now was in possession as its owner. It was further submitted that in fact in the property shown in green colour in the site plan, defendant No.1 had inducted the plaintiff as tenant on a rent of Rs.500/- per month. On 19.09.1999 FIR No.124 under Section 15 of Indian Medical Council Act was registered against the plaintiff at Police Station Mukandpur where defendant No.1 stood as surety for the plaintiff and furnished surety bonds in the sum of Rs.20,000/- on 08.06.2004. Copy of the sale deed in question was produced by defendant No.1 in the aforementioned criminal case. The plaintiff had taken the original sale deed in connection with the aforementioned criminal case and thereafter taking undue advantage, he started claiming himself to be the owner of the suit property (shown in the red colour).

Defendant No.2 by way of his separate written statement submitted that he was owner in possession of the suit property after having entered into an agreement to sell with defendant No.1 on 17.06.2016 for a sale consideration of Rs.90,000/-. It was submitted that the possession of the suit property stood delivered to him on the day of execution of agreement to sell itself.

Upon consideration of the matter in issue and on the basis of the evidence led during trial, the Courts below concurrently concluded that it was the admitted case of the plaintiff that he was not the owner of the suit property and the possession of the property had been handed over by defendant No.1 to defendant No.2 Jasvir Singh at the time of execution of the agreement to sell. As per the pleaded case of the plaintiff, he had become owner in possession of the suit property after paying a sum of Rs.1,50,000/- to defendant No.1 as token money, who then handed over the original sale deed of the suit property to the plaintiff, as guarantee of the aforesaid amount in the year 1995. It would be relevant to refer to the testimony of DW-3 Mamta Rani, Record Clerk, Judicial Record Room, Nawanshahr wherein it stands revealed that defendant No.1 had furnished surety bonds of the plaintiff for an amount of Rs.20,000/- before the trial Court at Nawanshahr in FIR No.124 dated 19.09.1999. While furnishing surety bonds, the surety i.e. defendant No.1 had also enclosed a copy of the sale deed dated 10.10.1988 to prove his ownership regarding the suit property. Not only were the surety bonds proved on record as Ex.D-6 but even the certified copy of the sale deed and site plan were placed on record as Ex.D-4 and D-5 respectively. Once it stands proved by way of cogent evidence that defendant No.1 had stood as surety for the plaintiff in the aforementioned criminal case on 08.06.2004 and even produced the original sale deed, the case of the plaintiff stands demolished that he had been handed the original sale deed and had come in possession of the suit property in the year 1995. Had the plaintiff been actually handed over the original sale deed and he had come in possession of the suit property, then

there was no occasion for the defendant No.1 to produce the original sale deed on 08.06.2004 in the criminal case while standing as surety for the plaintiff.

Still further, Gurcharan Singh, who was examined by the plaintiff himself as PW-3 in his cross-examination admitted that defendant No.1 had never sold the suit property to anyone nor received any sale consideration in his presence. The evidence of another witness PW-4 Sarabjit Kaur was also on the same lines and she admitted that defendant No.1 had furnished surety for the plaintiff in the criminal case in the year 2004.

On being pointedly asked, learned counsel for the plaintiff failed to bring to the notice of this Court anything on record to show that the conclusions arrived at by the Courts below were either contrary to the record or suffered from any material illegality.

In the circumstances, this Court does not find any error in the judgments and decree passed by the Courts below, which would warrant its interference. Accordingly, the appeal stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

12.07.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No