

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1880 of 2019 (O&M)
Reserved on : 01.06.2022
DATE OF DECISION : 04.07.2022

Karnail SinghAppellant

versus

Swaran Singh BoparaiRespondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Harkaran Singh, Advocate for the appellant

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ALKA SARIN, J.

The present regular second appeal has been preferred by the plaintiff-appellant against the judgments and decrees passed by both the Courts below dismissing his suit for permanent injunction.

The brief facts relevant to the present *lis* are that the plaintiff-appellant instituted a suit for permanent injunction praying therein for restraining the defendant-respondent from interfering in his possession of the suit property on the ground that the suit property was allotted to him by

the Tehsildar Sales, Ropar vide order dated 06.10.1980 and since then he is owner in possession of the said plot. The plaintiff-appellant averred in the plaint that he is tethering his cattle, storing cow dung cakes and storing his agricultural instruments on the suit property. It was further averred that the defendant-respondent had purchased land in village Khadhri and was alleging that he had purchased a plot, adjoining to the suit property, from one Nirmal Singh and under the garb of this document the defendant-respondent was threatening to encroach upon the suit property.

On notice, the defendant-respondent appeared and filed his written statement. It was denied for want of knowledge that any plot was allotted by the Tehsildar Sales, Ropar to the plaintiff-appellant. It was further averred that the plaintiff-appellant had exchanged the plot (suit property) with one Nirmal Singh vide Exchange Deed dated 28.09.2004 and in lieu thereof the plaintiff-appellant took another plot from Nirmal Singh also took possession of the exchanged plot. Since the date of the exchange i.e. 28.09.2004 Nirmal Singh was owner in possession on the basis of the Exchange Deed of the plot (suit property). Thereafter, vide agreement to sell dated 12.08.2009 Nirmal Singh further sold the suit property to the defendant-respondent and since then he is in possession thereof. Nirmal Singh even sold 1/3 share out of the land touching on the west of this plot to the defendant-respondent for Rs.60,000/-. The registered sale deed dated 03.03.2011 was witnessed by none other than the plaintiff-appellant himself. As such, it was averred that the plaintiff-appellant was neither owner nor in possession of the suit property.

Vide judgement and decree dated 30.10.2018 the Trial Court, on the basis of the pleadings of the parties and the evidence on the record, dismissed the suit of the plaintiff-appellant on the ground that there was no evidence on the record to prove the possession of the plaintiff-appellant and further that since there had been material concealment of facts from the Court, hence he was not entitled to the discretionary relief of injunction. Aggrieved by the judgment and decree passed by the Trial Court, an appeal was preferred by the plaintiff-appellant which was also dismissed vide judgment and decree dated 12.03.2019. Hence, the present regular second appeal.

The learned counsel for the plaintiff-appellant has vehemently contended that the plaintiff-appellant is owner in possession of the suit property on the basis of the order dated 06.10.1980 passed by the Tehsildar Sales, Ropar and that the suit property was never exchanged by him with Nirmal Singh. It was argued that both the Courts below had erred in non-suiting the plaintiff-appellant on illegal and erroneous grounds.

Heard.

In the present case the plaintiff-appellant while approaching the Court had concealed material facts in as much as the Exchange Deed, which was subsequently admitted by him in cross-examination, was not mentioned in the plaint as also the fact that the agreement to sell dated 12.08.2009 (Ex.D2) and copy of the sale deed dated 03.03.2011 (Ex.D1) were also concealed and did not find a mention in the plaint though the plaintiff-appellant is himself a witness to the sale deed dated 03.03.2011 (Ex.D1). A perusal of the judgments and decrees passed by both the Courts

below reveals that both the Courts below have concurrently held that the plaintiff-appellant was guilty of suppression of material facts disentitling him from the equitable relief of injunction. Further, the Courts below have held that there is not an iota of evidence on the record to show that the plaintiff-appellant was in possession of the suit property. Though an argument was raised before both the Courts below as well as before this Court that the Exchange Deed was never acted upon, however, there is no evidence on the record to prove this contention. Rather, the plaintiff-appellant withheld material facts while approaching the Court in as much as neither was the Exchange Deed mentioned nor the fact that the adjoining property had been purchased by the defendant-respondent from Nirmal Singh and the plaintiff-appellant himself was a marginal witness to the sale deed.

In the matter of **A. Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam [(2012) 6 SCC 430]** the Supreme Court inter-alia held that :

“It is the bounden duty of the court to uphold the truth and do justice. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts. The ultimate object of the judicial proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the court should be truthful. Once the court discovers falsehood, concealment, distortion,

obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrongdoer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.”

In view of the above and the concurrent findings of fact returned by both the Courts below, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The regular second appeal is accordingly dismissed. Pending application(s), if any, also stand disposed off.

**(ALKA SARIN)
JUDGE**

04.07.2022
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<u>NOTE:</u> Whether speaking/non-speaking : Speaking Whether reportable : YES/NO
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