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

**RSA-4109-2019 (O&M)
Date of decision : 08.04.2022**

Ram Prasad

.....Appellant

Versus

Balak Ram and Another

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Dinesh Arora, Advocate for the appellant.

ALKA SARIN, J.

The present regular second appeal has been preferred by the plaintiff-appellant against the concurrent findings recorded by both the Courts below.

Brief facts relevant to the present *lis* are that a suit was filed by the plaintiff-appellant for issuance of a declaration declaring the sale deed dated 15.08.1950 and judgment/award dated 27.09.2007 as illegal, null and void and a consequential relief of permanent injunction restraining the defendant-respondents from interfering the peaceful possession and enjoyment of the plaintiff-appellant over the suit property. It was pleaded in the plaint that the plaintiff-appellant was owner in possession of the property as described in the plaint. It was further the case that the father of the plaintiff-appellant was the owner in possession of the suit property and this fact was recorded in the house tax register of the Municipal Corporation,

Faridabad for the year 1976-77. It was further the pleaded case that the father of the plaintiff-appellant had executed a Will dated 18.07.1968 bequeathing the suit property in favour of the plaintiff-appellant and now by virtue of the Will he had become owner in possession. It was further the case that after filing of the suit and the written statement, it transpired that Khacheru Ram, father of the defendant-respondents, is stated to have purchased an area of 18 sq. yards from Khacheru son of Ajay Ram vide sale deed dated 15.08.1950 and, thereafter, had suffered a decree in favour of the defendant-respondents on 27.09.2007 in Suit No.814/17.08.2007 titled as Balak Ram Vs. Khacheru. It was pleaded that the sale deed and the judgment/award were illegal, null and void and not binding upon the rights of the plaintiff-appellant.

On notice, the defendant-respondents appeared and filed their written statements taking preliminary objections regarding maintainability, cause of action, *locus standi*, jurisdiction etc. On merits it was stated that the father of the plaintiff-appellant is stated to have died in the year 2001, however, the suit was filed only in the year 2011 and it does not stand to reason as to why the plaintiff-appellant waited for a long period of 10 years and why the Will had not been got probated till date. It was further stated that the father of the defendant-respondents, namely, Khacheru Ram son of Mangla Ram had purchased the land from Khacheru Ram son of Ajay Ram vide sale deed dated 15.08.1950 and, thereafter, had suffered a consent decree dated 17.08.2007 pursuant to a family settlement before the Permanent and Continuous Lok Adalat, Faridabad in Civil Suit No.814 of 17.08.2007. Hence, the defendant-respondents claimed to be owners in possession of the suit property. Replication was not filed to the written

statement.

On the basis of the pleadings, the following issues were framed by the Trial Court :

1. *Whether the plaintiff is entitled for a decree of declaration in favour of plaintiff and against the defendants declaring the impugned sale deed dated 15.08.1950 and award dated 27.09.2007 passed in civil suit no.814 of 17.8.2007 titled as Balak Ram and others vs. Khacheru as illegal, null and void, as prayed for ? OPP*
2. *Whether the plaintiff is entitled for a decree of permanent injunction as prayed for ? OPP*
3. *Whether the plaintiff is entitled for alternative relief, as prayed for ? OPP*
4. *Whether the suit of the plaintiff is time barred ? OPD*
5. *Whether the plaintiff has concealed the material facts from the court and has not come to the court with clean hands ? OPD*
6. *Whether the suit of the plaintiff is not maintainable in the present form ? OPD*
7. *Whether the plaintiff has no locus standi and no cause of action and to file the present suit ? OPD*
8. *Whether the plaintiff has not paid the proper advalorem court fee on the plaint ? OPD*
9. *Whether the suit has not been properly valued for*

the purpose of court fee and jurisdiction ? OPD

10. Whether the suit is bad on account of mis joinder

and non joinder of necessary parties ? OPD

11. Whether the plaintiff is stopped from filing the suit

due to his own act and conduct ? OPD

12. Relief.

The Trial Court dismissed the suit filed by the plaintiff-appellant vide judgment and decree dated 23.05.2016. The plaintiff-appellant challenged the said judgment and decree before the Lower Appellate Court by filing an appeal which also met with the same fate vide judgment and decree dated 06.07.2019. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellant has contended that both the Courts below had erred in dismissing the suit of the plaintiff-appellant inasmuch as the ownership and possession of the plaintiff-appellant stood proved from the assessment register which was produced by the plaintiff-appellant. Learned counsel for the plaintiff-appellant has further contended that the sale deed in favour of the father of the defendant-respondents was only qua 18 sq. yards and the consent decree was qua 180 sq. yards and, hence, the same would show that the transfer by way of the collusive decree was illegal, null and void.

I have heard learned counsel for the plaintiff-appellant and perused the paper book.

In the present case both the Courts below have concurrently found that the plaintiff-appellant was unable to prove his case as set up in the plaint. A perusal of the pleadings would reveal that the plaint was totally

silent qua the area comprised in the suit land. Infact, though the description of the property was mentioned in the plaint, however, surprisingly no area has been mentioned. Learned counsel for the plaintiff-appellant was unable to show how without having to mention the area the sale deed and the judgment/award could be held to be null and void. Further, the sole reliance on the assessment registers to contend that the plaintiff-appellant was owner in possession is also wholly misplaced. The assessment registers were merely produced on the record and not duly proved. The plaintiff-appellant who approaches the Court needs to stand on his own feet and needs to prove his case. In the present case, besides the entries in the assessment register, which was also not proved, not an iota of evidence was produced by the plaintiff-appellant to show that he was owner in possession of the suit property. No question of law, much less, any substantial question of law arises in the present case.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

08.04.2022

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking : Speaking
 Whether reportable : Yes/No