

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.4079 of 2018 (O&M)

Reserved on : 18.10.2022

Date of Decision : 21.10.2022

Satish Kumar

....Appellant

VERSUS

Smt. Chanderkala

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sumit Gupta, Advocate for the appellant.

ALKA SARIN, J. (Oral)

The present appeal has been preferred by the defendant-appellant against the concurrent findings returned by both the Courts below whereby the suit for possession and mandatory injunction filed by the plaintiff-respondent has been decreed.

Brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for recovery of possession averring therein that the plaintiff-respondent had purchased a house measuring 1080 sq. yards from the defendant-appellant vide registered Sale Deed No.4472 dated 04.01.2010 situated at Village Raiya, Tehsil and District Jhajjar and hence became owner in possession of the same. After the purchase of the house, the plaintiff-respondent put her household articles in the house and locked the gate. However, since the plaintiff-respondent is an old aged lady and she resided at Jhajjar along with her children, taking advantage of her absence, the defendant-appellant, without having any right to do so, in the month of June 2013 broke the lock of the suit property and took illegal possession of the same. It was further averred that the defendant-appellant was wanting to

change the nature of the suit property by raising construction over the same.

Hence, the suit.

Written statement was filed on behalf of the defendant-appellant denying all the averments made in the plaint. It was pleaded that the sale deed was never executed in favour of the plaintiff-respondent. Rather, a deed was executed as security to secure a loan which also stands repaid. The factum of delivery of possession was denied. It was further pleaded that the suit property was ancestral property of the defendant-appellant and that the defendant-appellant had 1/5th share in it.

On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled to decree of possession of the suit property specifically mentioned in para no. 1 of the plaint marked by letters ABCD in the site plan of the plaintiff, as shown in the site plan of plaintiff ? OPP
2. Whether the plaintiff is entitled to the decree for mandatory injunction directing the defendant to hand over the vacant peaceful possession of the suit property ? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
4. Whether the plaintiff has no cause of action and *locus standi* to file the present suit ? OPD
5. Whether the plaintiff is estopped from filing the suit by his own act and conduct ? OPD

6. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary party ? OPD

7. Relief.

On the basis of the pleadings of the parties and the evidence led, the Trial Court held that the execution of the sale deed (Ex.P1) was not disputed. It was further held that the sale deed was duly proved by examining the witnesses as well as the scribe and further that the defendant-appellant had failed to prove that the said sale deed was executed only to secure a loan. It was further held that no evidence was brought on the record to show that the defendant-appellant was owner only to the extent of 1/5th share in the suit property. The suit was decreed vide judgment and decree dated 15.04.2017. Aggrieved by the same, an appeal was preferred by the defendant-appellant which appeal was also dismissed by the lower Appellate Court vide judgment and decree dated 12.02.2018. Hence, the present regular second appeal.

Learned counsel for the defendant-appellant would contend that the sale deed dated 04.01.2010 (Ex.P1) was executed only to secure a loan. It is further the contention that an amount of Rs.13,50,000/- was withdrawn from the Bank and was paid to the plaintiff-respondent.

Heard.

In the present case, undisputedly, the sale deed dated 04.01.2010 (Ex. P1) was executed for a sale consideration of Rs.9 lakhs. As per contents of the sale deed, the possession was also handed over to the plaintiff-respondent. *Qua* the stand taken by the defendant-appellant that the said sale deed was executed only to secure a loan, the said stand remains unsubstantiated inasmuch as no evidence has come on the record in support

defendant-appellant, even today, is unable to point out any evidence on the record to show that the said sale deed was executed to secure a loan. The argument of learned counsel for the defendant-appellant that an amount of Rs.13,50,000/- was withdrawn from the account of the defendant-appellant and was paid to the plaintiff-respondent also cannot be accepted inasmuch as there is no evidence on the record to show firstly, as to what was the amount borrowed by the defendant-appellant from the plaintiff-respondent and secondly, there is no evidence to show that the said amount of Rs.13,50,000/- was paid to the plaintiff-respondent at any point of time. The execution of the sale deed stands duly proved by the marginal witnesses as well as the scribe. It has also come in evidence that some land was sold by the husband of plaintiff-respondent vide sale deed Ex.P3 prior to execution of the sale deed dated 04.01.2010 (Ex.P1) to show that she had sufficient amount on 04.01.2010 to pay the consideration amount for the suit property. No other argument has been raised by learned counsel for the defendant-appellant.

In view of the concurrent findings of fact returned by both the Courts below, I do not find any illegality or infirmity in the judgments and decrees passed by the both the Courts below. No question of law, much less any substantial question of law, arises in the present appeal which has no merit and same is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

21.10.2022
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO