

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 146 of 1993 (O&M)

Date of decision : 27.1.2023

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Ashok Kumar

.....Appellant

vs.

Sat Parkash and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Mani Ram Verma, Advocate for the appellant

Mr. Amit Jain, Senior Advocate with

Mr. Chetan Salathia, Advocate for the respondents.

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H. S. Madaan, J.

1. Briefly stated, facts of the case are that plaintiff – Ashok Kumar son of Pehlad Singh, resident of Pana Ladhan, Charkhi Dadri, had brought a suit against defendants Sat Parkash and Har Sawrup, both sons of Richhpal, residents of Charkhi Dadri, Tehsil Charkhi Dadri, claiming possession by way of ejectment of defendants from the suit property.

2. As per case of the plaintiff, he had been in possession of the suit property, as owner. However, during his absence from the village, the defendants had taken forcible possession thereof, by demolishing the wall and opening a door. When the defendants did not vacate the said property, despite repeated requests by the plaintiff, he brought the suit in question.

3. On notice, the defendants appeared and filed a written statement contesting the suit, denying that the plaintiff had been in possession of the suit property as owner, rather claiming themselves to the owners of the suit property. According to them, previously their ancestors owned that property from whom they had acquired the ownership rights. The defendants denied having demolished the wall in absence of the plaintiff or taking forcible possession of the suit property. The alternative plea taken up by the defendants was that they have become owners of the suit property by way of adverse possession.

4. Plaintiff filed replication to the written statement, controverting the assertions made therein and reiterating the averments in the plaint. From the pleadings of the parties, following issues were framed :-

- 1) Whether the plaintiff is the owner of the suit land, as alleged? OPP
- 2) Whether the plaintiff is entitled to the possession of the suit property? OPP
- 3) Whether the plaintiff has no locus standi to file the present suit ? OPD
- 4) Whether the suit is not maintainable in the present form ? OPD
- 5) Whether the suit is false and frivolous? OPD
- 6) Relief.

6. Parties were afforded adequate opportunities to lead evidence in support of their respective claims.

7. After hearing the arguments, the trial Court of Sub Judge Ist Class, Charkhi Dadri, decided issues No. 1 and 2 against the plaintiff and in favour of the defendants. Issues No. 3 to 5 were not pressed and were decided against the defendants, accordingly. As per findings of the trial Court, the suit of the plaintiff was dismissed vide judgment and decree dated 13.12.1990.

8. Feeling aggrieved, the plaintiff had preferred an appeal before the District Judge, Bhiwani, which was assigned to Additional District Judge, Bhiwani. However, he dismissed that appeal vide judgment and decree dated 17.8.1992.

9. Still feeling dissatisfied, the plaintiff has knocked at the door of this court by way of filing the present regular second appeal before this Court, notice of which was given to the respondents-defendants, who have put in appearance through counsel.

10. I have heard learned counsel for the parties, besides going through the record.

11. In this case, the plaintiff claimed himself to be owner of the suit property alleging that the defendants, who have no concern therewith, had taken forcible possession of the same during his absence by breaking open the wall and installing a door there, which allegations were strongly refuted by the defendants. The onus was heavy upon the plaintiff to establish such assertions on record by leading enough cogent and convincing evidence, but he has miserably failed to do so. Although the basis for alleged title of the plaintiff was registered Gift Deed dated 15.3.1984 executed by

Rajinder Parshad, but that Gift Deed was not proved on record. Such being the state of affairs, the plaintiff could not establish his ownership of the suit property and unless the plaintiff could show that he had a better title than the defendants, he could not possibly ask for decree for possession by way of ejectment of defendants from the suit property. The plaintiff had failed to discharge the initial onus placed upon him to prove his title over the suit property. Therefore, the trial Court by detailed and thorough analysis of the evidence adduced by the parties in light of their pleadings, had decided issues no. 1 and 2 against the plaintiff and in favour of the defendants, resultantly, dismissing the suit filed by the plaintiff. Such judgment and decree were affirmed by the learned additional District Judge, Bhiwani, vide judgment dated 17.8.1992.

12. I find that judgments passed by both the Courts below to be quite detailed, well reasoned, based upon proper appreciation and appraisal of evidence and correct interpretation of law. No illegality or infirmity is found to be there with, which might have warranted interference by this Court in Regular Second Appeal.

13. No substantial question of law arises in the present appeal.

14. The appeal is found to be without any merit and the same stands dismissed accordingly.

27.1.2023
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable	Yes / No
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