

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

RSA-429-1992
Date of decision: 01.09.2023

SULTAN AND OTHERS

..Appellants

Versus

PREHLAD AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Mittal, Advocate
for the appellants.

ANIL KSHETARPAL, J(Oral)

1. Despite service of notice, the respondents have not entered appearance. They were proceeded against ex parte on 10.04.1992.
2. The correctness of the findings of fact arrived at by the First Appellate Court is assailed by the defendants in this second appeal.
3. In order to comprehend the controversy involved in the present case, the relevant facts, in brief, are required to be noticed.
- 4 The plaintiff filed a suit for grant of decree of permanent injunction restraining the defendants from interfering in his possession. The suit was filed with respect to the property known as *Ahata No.21, Ahata No.12 to 14/House No.8*. It is claimed that originally, the plot in question was owned by Sh. Roop Dass, who was great grand-father of the plaintiff. It is also stated by the plaintiff that he is serving at Mahendergarh and due to his absence, the defendants want to take possession of the disputed land forcibly.
5. Defendant No.1, 3, 5 and 7 contested the suit while asserting that the plaintiff has no concern with the disputed property and he was never

in possession of the property in dispute. It is also claimed that the plaintiff is residing at Mahendergarh for the last many years and the defendants have constructed 8 feet wall between the '*Chappars*' (the temporary construction). The defendants have also planted trees and stored their fodder, fire wood and tethered their cattle. The defendants also claimed to have perfected their title by way of adverse possession. The plaintiff vide affidavit dated 15.06.1974, surrendered his rights in favour of the defendants.

6. The trial Court decreed the suit after finding that the defendants are in settled possession of the same and the plaintiff had in fact executed the affidavit admitting that the defendants are in actual physical possession of the suit property.

7. The First Appellate Court has confirmed the findings of fact arrived at by the trial Court that the defendants after raising certain construction are in possession of the property, however, set aside the judgment passed by the trial Court on the ground that affidavit Ex.D-1 amounts to gift deed which results in transfer of title valuing more than Rs.100/- and therefore, inadmissible in evidence because it is not registered.

8. This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook along with the trial Court record, which was available on the DMS (digital record).

9. The learned counsel representing the appellant submits that execution of affidavit Ex.D-1 has been proved by examining Sh. Kuldeep Yadav, Advocate, who has attested the affidavit, Sh. Pokharmal, the marginal witness and Sh. Jugal Kishore, the scribe. The learned counsel representing the appellant submits that the First Appellate Court also found that the defendants are in the settled possession of the property, therefore, the suit

filed by the plaintiff for grant of permanent injunction was not maintainable.

He further submits that in absence of any prayer for delivery by the plaintiff in his plaint the First Appellate Court has committed an error in granting a decree for mandatory injunction directing that the plaintiff should be put in possession of the property.

10. This Court has considered the submissions while analyzing the arguments of the learned counsel representing the appellant. There is no dispute that Ex.D-1 (affidavit dated 15.06.1974) is not registered, however, it at least proves that the plaintiff has acknowledged the possession of the defendants (appellants herein). Both the Courts have also recorded the concurrent findings that the defendants are in possession of the property in dispute. The plaintiff has not sought decree for possession. Even if Ex.D-1 is not registered still the document can be seen for collateral purpose i.e. for determining the possession of the defendants. In these circumstances, the First Appellate Court clearly erred in failing to examine the document Ex.D-1. Moreover, once the Appellate Court also found that the defendants are in possession and they have made certain constructions then the suit filed by the plaintiff for grant of injunction restraining the defendants for interfering in his possession was not maintainable. The possession of the defendants is also proved by the witnesses produced by the defendants. It is further evident that the First Appellate Court without there being any prayer in the plaint has granted decree for mandatory injunction directing the defendants to put the plaintiff in possession of the property. In the considered view of the Court, in absence of the prayer, the First Appellate Court was not correct in directing the delivery of possession. Though, Order VII Rule 7 of the Code of Civil Procedure, 1908, enables the Court to mould the relief,

however, the relief of mandatory injunction does not fall within the scope of general or other relief. In any case, the plaintiff also does not have equity in his favour, particularly when he filed the suit after concealing the affidavit dated 15.06.1974. The First Appellate Court has also found that the plaintiff is not residing in the village for the last 30 years before the filing of the suit.

11. The First Appellate Court has also held that the plaintiff is not estopped from filing the suit. In the considered view of the Court, such finding does not require any interference.

12. Keeping in view the aforesaid discussion, the judgment passed by the First Appellate Court is set aside and that of the trial Court is restored.

13. With these observations, the appeal is allowed.

14. All the pending miscellaneous applications, if any, are also disposed of.

September 01st, 2023

(ANIL KSHETARPAL)
JUDGE

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