

RSA-4446-2019 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-4446-2019 (O&M)
Decided on : 09.08.2023

Saurabh Kumar and another

. . . Appellant(s)

Versus

Meenu and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Anil Kumar Rana, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

1. Present Regular Second Appeal (RSA) has been filed by the plaintiffs (appellants herein) against the concurrent findings of dismissal of their suit by the Courts below.

2. A suit was instituted by the plaintiffs – Saurabh Kumar and Rohit Kumar sons of Sh. Mohan Lal @ Madan Mohan, against Smt. Meenu w/o Sh. Nand Kishore and Mohan Lal @ Madan Mohan (father of the plaintiffs) for declaration and permanent injunction as a consequential relief thereof, as the plaintiffs (appellants) are co-owners in joint possession of the property in dispute as detailed in para No.2 of the plaint, and it is also pleaded that defendant No.1 (respondent No.1 herein) has no right, title or interest in the shop in dispute *qua* the share of the plaintiffs.

Besides above, sale-deed dated 17.05.2012, bearing vasika/document No.2215, executed by defendant No.2 in favour of defendant No.1, *qua* the share of the plaintiffs in the shop in dispute, was also challenged.

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3. Plaintiffs (appellants) are seeking declaration that they are entitled to have 1/14th share in the shop, which is having built-up area of 28½ sq. yards only.

4. Learned Trial Court has examined the evidence minutely and reached to the conclusion that plaintiffs have failed to examine the executant of the sale-deed i.e. Mohan Lal @ Madan Mohan (defendant No.2), within whose lifetime, the said sale-deed, has been executed. It has also been held that the sale-deed is a registered document, and thus, it is admissible document as per the Indian Evidence Act, 1872. Finding given by learned Trial Court, says as under:-

“18. A bare perusal of the affidavit Ex.P1 makes it clear that neither the same bears the seal or the name of stamp vendor on it nor the factum that the said Mohan Lal was only a co-sharer in the suit property. Further to prove this affidavit the plaintiffs have neither examined executant Mohan Lal (defendant no.2) who is their father nor have examined the Stamp vendor or the Notary. It is not believable that the plaintiffs could have sat over this affidavit and would not have got their name entered in the Municipal record. The sale deed bearing vasika no.2215 dated 17.05.2012 is a registered document vide which the suit property measuring 28 Sq. yard was sold by Kailash Devi, Shyam Sunder, Madan Mohan, Nand Kishor, Ashok Kumar, Smt. Mithlesh, Daya and Asha in favour of Smt. Meenu wife of Nand Kishore for total sale consideration of Rs.6,75,000/-. Though the plaintiffs are asserting that their father relinquished his right in the suit property in their favour. However they have not uttered a single word about the share of the other cosharer in the suit property. Even it has not been disputed that other co-sharers mentioned in the sale deed were in fact the owners of the said property. Even the plaintiff's own father who is

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allegedly executant of the affidavit Ex.P1 has not been examined by the plaintiffs. The sale deed bearing vasika no. 2215 dated 17.05.2012 is a duly registered document and the other executant of the same have not been made party in the present suit. Even otherwise it was incumbent on the plaintiff to prove that the executant of the same did not have the power to execute the same; which the plaintiffs have failed to do. As far as the question of legal necessity is concerned. From the sale deed Ex.P2, it is clear that defendant no.2 had only 1/14th share in the said property when the total sale consideration was Rs. 6,75,000/- the father of the plaintiffs i.e. defendant no.2 Mohan Lal @ Madan Mohan would have received only an amount of Rs. 48214.29/-. Even the plaintiff no.1 Saurabh Kumar while appearing as PW1 during his cross-examination has admitted that he and his brother both were unemployed. There may be various reasons for selling the said property by the defendant no.2.”

5. Said finding is also affirmed by the learned First Appellate Court. The learned First Appellate Court reached to the conclusion that the shop in question is lying locked for a long time, and thus, claim of the appellants (plaintiffs) that they are in exclusive possession of the property, was not believed. Said fact has been examined in the cross-examination by the plaintiffs and the witnesses produced by them.

6. Thus, finding no substance in the submissions addressed by the counsel for the appellants (plaintiffs), this Court is not impressed with the submissions of the appellants, and thus, finds that the impugned judgments & decrees passed by the learned Courts below are worth to be maintained.

Even no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decrees passed by the Courts below.

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Thus, for the reasons recorded herein-above, the instant appeal being devoid of merits, stands dismissed. The judgments & decrees passed by both the Courts below are affirmed.

Civil Miscellaneous application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

August 09, 2023
J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*