

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

CM-3119-C-2022 &
CM-3120-C-2022 in/&
RSA-982-2022 (O&M)
Date of Decision :20.02.2023

Rajesh

...Appellant

Versus

Dei Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Surinder Singh Duhan, Advocate for the appellant.

* * *

Harsimran Singh Sethi, J. (Oral)

Present regular second appeal has been filed against the concurrent findings recorded by the Courts below that the plot which was purchased vide sale deed dated 09.06.1981 was equally divided between three brothers namely, Krishan, (father of the appellant), Bhagat Singh and Dei Ram. Further it has already been recorded by the Courts below that the portion of the plot which came to the share of Bhagat Singh after the said partition was sold by Bhagat Singh to his brother defendant-Dei Ram for the sum of Rs.60,000/- though, the appellant/plaintiff claimed the said plot to have been gifted by Bhagat Singh to him, which fact has been disbelieved by the Courts below and the suit as well as appeal filed by the appellant-plaintiff has been dismissed. Hence, the present regular second appeal.

Learned counsel for the appellant-plaintiff argues that there was no occasion to disbelieve the factum of gift of the said portion of plot owned by Bhagat Singh in favour of the appellant/plaintiff and allowing the

counter claim of the defendant-Dei Ram that Bhagat Singh had sold the said portion of plot to him, keeping in view the evidence which has come on record hence, the judgements and decrees of the Courts below are perverse to the evidence and facts on record and the same are liable to be set aside.

I have heard learned counsel for the appellant and have gone through the record with his able assistance.

Bhagat Singh, who was the owner of the portion of the plot, which is in dispute, had appeared as prosecution witness No.2 and conceded that fact of selling his share of the plot in favour of defendant-Dei Ram for amount of Rs.60,000/- but submitted that said amount was returned to defendant-Dei Ram. Once the factum of selling the share of plot by Bhagat Singh in favour of Dei Ram was conceded by the owner himself and return of the money as being claimed, was not proved on record, the Courts below have rightly come to the conclusion that portion which initially belonged to Bhagat Singh was sold by him to his brother Dei Ram-defendant for consideration and the claim of the appellant-plaintiff that the said portion of plot was gifted to him by prosecution witness No.2 Bhagat Singh was rightly disbelieved. No perversity is brought to the notice of this Court in the said findings qua the facts or evidence on record. Once the owner of the land in question was examined and he conceded the fact of selling his share in favour of his other brother Dei Ram, dismissing the suit as well as appeal preferred by the appellant-plaintiff cannot be termed to be perverse to the facts and evidence on record. This Court in regular second appeal cannot appreciate the facts and evidence on record to record a finding other than the one recorded by the Courts below.

No other argument has been raised.

Learned counsel for the appellant-plaintiff has not been able to point out any perversity in the findings recorded by the Courts below and the only endeavour of the appellant-plaintiff is for re-appreciation of the evidence by this Court to come to the different conclusion as arrived by the Courts below.

Keeping in view the above, no ground for interference is called for by this Court and the present regular second appeal is accordingly dismissed.

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Applications are also dismissed.

February 20, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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