

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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RSA No.1785 of 2022(O&M)

Date of decision: 19.01.2023

Billu @ Balwinder Ram

....Appellant

V/s

Reena Devi and another

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Ravneet Singh Joshi, Advocate,
for the defendant-appellant.

VIKAS SURI, J. (Oral)

CM-7624-C-2022

Prayer made in this application is for passing an order on the application for stay bearing No.CM-6004-C-2002.

Learned counsel for the appellant submits that possession of the suit property has been taken from him through the process of Court in November, 2022, and on account of the said fact the present application has been rendered infructuous as such. It is prayed that the same be disposed of accordingly.

CM stands disposed of as having been rendered infructuous.

CM-7626-C-2022

Learned counsel for the appellant submits that in view of the stay application having been rendered infructuous, he does not wish to press the present application for placing on record the interlocutory order dated 12.10.2022 as Annexure P-4.

CM stands disposed of as not pressed.

RSA-1785-2022

This regular second appeal has been preferred by the defendant against the impugned judgment and decree passed by the first appellate Court, confirming the decree for possession passed by the trial Court.

The facts in brief giving rise to the present appeal are that the plaintiff-respondents filed a suit for possession seeking a decree directing the defendant or anybody acting on his behalf to stop using and to deliver the vacant possession of house measuring 5 *marlas*, compromised in *Khasra* No.263(36-17), 365(0-5), 420(14-8), *Khata* No.9/9, *Khatuni* No.13, situated at Village Mauli, Tehsil Phagwara, District Kapurthala.

It is pleaded that the husband of plaintiff No.1 viz. Ram Lal, had purchased the suit land measuring 5 *marlas* from its previous owner namely Dilbagh Singh son of Thakur Singh vide registered sale deed date 22.02.2006. Thereafter, Ram Lal and plaintiff No.1 jointly raised construction of the house on the plot land and started to live in the same. Plaintiff No.2 is the daughter born from the wedlock of Ram Lal and plaintiff No.1 and residing with plaintiff No.1, who has got no adverse interest to the interest of the minor. Unfortunately on 03.10.2010, Ram Lal, i.e. husband of plaintiff No.1, passed away and the plaintiffs shifted to the parental house of plaintiff No.1 in District Chamba (Himachal Pradesh). Subsequently, plaintiff No.1 got remarried at Village Sultan, Tehsil and District Amritsar. It is pleaded that immediately after the death of Ram Lal, plaintiff No.1 asked the defendant to look after the house in dispute in her absence. In June 2017, plaintiff No.1 learnt that the defendant had encroached the house in dispute and had also changed the electricity connection, which was earlier in the name of husband of plaintiff No.1, to his own name and had also removed the household articles of the plaintiff from the house in question.

Upon notice, defendant appeared and filed written statement. Defence was set up that the plot in dispute was handed over to him by one Pritam Singh alleged to be the owner of the property/plot in question vide agreement dated 16.08.2013 for the services rendered by the defendant to the said Pritam Singh and thereafter, the defendant has made construction upon the plot by spending money from his own pocket. The water connection was also got installed by defendant in the house in question.

It was also pleaded that Pritam Singh had deposited Rs.4 lakhs in the name of plaintiff No.2 in Canara Bank, Radha Swami Sat Sang Beas, Beas. The fact of re-marriage of plaintiff No.1 was denied for want of knowledge.

The parties led their respective documentary and ocular evidence. In view of the pleadings of the parties, the evidence adduced on record and the submissions advanced, the suit for possession was decreed vide judgment and decree dated 10.12.2019, after appreciating the evidence on record, a categorical finding was returned that the land in question was earlier shown in the revenue record to be in the name of Dilbagh Singh son of Thakur Singh and the said suit property had been purchased by the deceased Ram Lal (husband of plaintiff No.1) vide registered sale deed dated 22.02.2006 (Ex.P-2). The death of Ram Lal, husband of plaintiff No.1 and father of plaintiff No.2, was proved by a copy of death certificate Ex.P-3, whereas the factum of marriage was proved vide marriage certificate Ex.P-4. The birth of plaintiff No.2 on 03.04.2009, born from the wedlock of plaintiff No.1 with deceased Ram Lal, was proved by her birth certificate Ex.P-5. The defendant had also proved a copy of agreement dated 16.08.2013 as Ex.D-1, executed by one Pritam Singh to hand over the possession of the said plot in question to the defendant. The defendant miserably failed to

prove the title of Pritam Singh, nor any evidence was brought on record to rebut the revenue record, wherein the property in question that was purchased by the deceased Ram Lal vide registered sale deed dated 22.02.2006, was reflected in the name of its previous owner Dilbagh Singh son of Thakur Singh. In fact, the defendant while deposing as his own witness as DW-1, categorically admitted in his cross-examination that he is not in possession of any document regarding the ownership of Pritam Singh.

The trial Court returned a categoric finding of fact that the defendant has failed to prove on record the alleged payment of Rs.4 lakh in the name of plaintiff No.2. A specific finding was also returned that before any right, title or interest could be said to have been created in favour of defendant by Pritam Singh, it was incumbent upon the defendant to prove that the said Pritam Singh had become owner of the suit property. Thus, in the absence of any document to prove the title of Pritam Singh, the agreement (Ex.D-1) at best was merely a piece of paper and the same cannot create any right, title or interest in favour of the defendant-appellant.

It is in light of the evidence available on record, the finding of fact was returned that it is duly established from the record that the plaintiffs are owner of the suit property being the legal representatives of deceased Ram Lal, who had purchased the same vide registered sale deed dated 22.02.2006 from its previous owner Dilbagh Singh son of Thakur Singh. Moreover, it is settled principle of law that no right in an immovable property valued more than Rs.100/- can be extinguished or created by way of an unregistered document.

Aggrieved against the judgment and decree passed by the trial Court, the defendant-appellant preferred an appeal. The first appellate Court on

appreciating the entire matter and evidence on record, found nothing wrong in the findings written by the trial Court and accordingly confirmed the same. The first appellate Court also confirmed the finding that nothing has come on record that in the accounts of the plaintiffs, any amount of Rs.4 lakh was transferred by Pritam Singh or anyone else to get the suit land transferred from the plaintiffs or even from their predecessor-in-interest Ram Lal, to the defendant-appellant. Accordingly, the appeal was dismissed on 15.02.2022.

The defendant-appellant has approached this Court by way of Regular Second Appeal, assailing both the judgments and decrees averring that findings returned by both the Courts below are contradictory to law and have not properly appreciated all evidence.

Heard learned counsel for the appellant and with his able assistance perused the file.

Learned counsel for the appellant has made a feeble attempt to assail the concurrent findings returned by the Courts below and is at pains to point out any material evidence on record that would go to show the title or property interest was ever acquired by Pritam Singh, i.e. the executor of the agreement dated 16.08.2013 (Ex.D-1) in favour of defendant-appellant.

In view of the above, it cannot be said that the defendant-appellant had acquired any interest in the suit property. Moreover, nothing has been pointed out from the record to show that the judgments and decree passed by the Courts below is erroneous or contrary to any provision of law.

No substantial question of law arises in the instant second appeal, which is pre-requisite to exercise jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

Keeping in view the totality of the discussion and the settled legal proposition, there is no merit in this regular second appeal and the same is dismissed.

(VIKAS SURI)
JUDGE

January 19, 2023
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Whether speaking/reasoned:	Yes
Whether reportable:	No