

RSA-3852 of 2019 (O&M)

2023:PHHC:142157

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

RSA-3852 of 2019 (O&M)
Date of decision: 07.11.2023

Dara Singh

.....Appellant

vs.

Jaswinder Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. G.S. Nagra, Advocate,
for the appellant.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 22.05.2018 passed by the Court of learned Civil Judge (Junior Division), Ajnala, whereby suit for permanent injunction filed by the plaintiff-appellant has been dismissed as well as against the judgment and decree dated 25.03.2019 passed by the Court of learned Additional District Judge, Amritsar, whereby appeal filed by the plaintiff-appellant, challenging the judgment and decree dated 22.05.2018, has been dismissed.
2. For convenience sake, reference to parties is being made as per their status in the civil suit. Briefly stated, plaintiff filed a suit for permanent injunction pleading therein that suit property as detailed in head note of plaint is in possession of the plaintiff and plaintiff alongwith his family members is residing in said house in dispute for the last 25 years. Plaintiff has his Aadhar card and vote at the address of suit property. The defendant has no right, title or interest in the house in dispute. The

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defendant was known to plaintiff and plaintiff used to get money on interest from him from time to time. Lastly plaintiff borrowed a sum of Rs.46,000/- in August 2012 from the defendant. Plaintiff agreed to repay the said amount alongwith interest within a period of six months but said amount could not be repaid to the defendant but till the month of October 2014, the plaintiff has regularly paid interest to the defendant at the rate of 2% per month. When plaintiff borrowed amount from the defendant in August 2012, he obtained thumb impression of the plaintiff on some blank stamp papers just as a surety of the borrowed amount. Due to tight financial condition, the plaintiff could not pay the said amount to the defendant but defendant on the said blank stamp papers prepared some bogus documents in respect of the house of the plaintiff. The defendant has given a false and frivolous application at police station Ajnala and he alongwith his supporters and with the help of police has threatened to dispossess the plaintiff forcibly and illegally from the suit property.

3. Upon notice the defendant appeared and filed written statement stating that plaintiff himself sold the property in dispute to the defendant vide agreement dated 14.02.2013 after receiving the total sale consideration but thereafter plaintiff requested the defendant and sought some time to vacate and hand over the vacant possession to defendant. Due to cordial relation between each other the defendant accepted the request of plaintiff. It is denied that defendant has no right, title or interest in the suit property. It is admitted that plaintiff and defendant are at visiting terms with each other. It is denied that plaintiff used to get money on interest from the defendant time to time. It is stated that defendant has become owner on the basis of agreement dated 14.02.2013. The defendant

requested the plaintiff many times to hand over the vacant possession of the property in dispute but he did not pay any heed towards the genuine requests of defendant. Denying other averments prayer was made for dismissal of suit.

4. Replication to the written statement was filed wherein the averments put forth in the written statement are denied and those of plaintiff are reiterated.

5. From the pleadings of the parties, the trial Court framed the following issues: -

- 1) Whether plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
- 2) Whether the suit of the plaintiff is not legally maintainable? OPD
- 3) Whether the plaintiff has got any cause of action to file the present suit? OPD
- 4) Whether plaintiff has not come to the Court with clean hands and has suppressed the material facts from the Court? OPD
- 5) Whether the suit of the plaintiff is not properly valued for the purpose of Court fees and jurisdiction? OPD
- 6) Relief.

6. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record dismissed the suit filed by the plaintiff vide judgment and decree dated 22.05.2018.

7. Feeling aggrieved against the said judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 25.03.2019.

8. Learned counsel for the appellant contended that the judgments and decrees passed by both the Courts below are against law and

the evidence on record. He further contended that appellant is in possession of the suit property. He further contended that both the Courts below have recorded a wrong finding that appellant had not come to the Court with clean hands. He further contended that judgments of the Courts below are based on surmises and conjectures and being perverse the same are liable to be set aside.

9. I have heard the learned counsel for the appellant and perused the record.

10. Appellant filed a suit seeking relief of injunction against the respondent-defendant from interfering in his possession on the suit property which is situated within *Lal Lakir* of the village and forcibly dispossessing him from the same on the ground that he is in possession of the suit property. In his cross-examination PW-3 Joga Singh admitted that on 14.02.2013 plaintiff executed an agreement in favour of defendant. Statement of this witness makes it clear that no signatures/thumb impression of appellant-plaintiff were obtained on blank papers by the respondent-defendant as alleged by him. Respondent-defendant in order to prove the agreement to sell has examined DW-1 Amarjit Singh an attesting witness who has stated that on 14.02.2013 plaintiff regarding the suit property has executed an agreement in favour of the defendant and after admitting the contents of the same to be true put his thumb impression on the same. It is admitted by appellant-plaintiff in his cross-examination that suit property is situated within Lal Lakir of village. So no sale deed of this property was to be executed and said property was to be sold on the basis of agreement to sell only. Therefore, it has rightly been observed by the Courts below that appellant failed to prove that he took loan of Rs.46,000/-

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from the defendant and when he failed to repay the same his thumb impressions were obtained on blank papers which were converted into agreement to sell. Moreover, appellant-plaintiff has not sought declaration with regard to said agreement to sell of the suit property and filed simplicitor suit for permanent injunction. It has further been rightly observed that since the appellant-plaintiff has not come to the Court with clean hands so he is not entitled to discretionary relief of injunction even if he is in possession of suit property.

11. Concurrent findings have been recorded by both the Courts below. Learned counsel for the appellant has failed to show that the findings recorded by Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

12. In view of above, no question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

13. Dismissed.

14. Pending application(s), if any, stand disposed of accordingly.

(NAMIT KUMAR)
JUDGE

07.11.2023
R.S.

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No