

ESA-18-2009 (O&M)

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

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ESA-18-2009 (O&M)

Reserved on : 20.02.2023

Date of Decision:14.03.2023

Dayanand

...Appellant

Versus

Sarla Devi (through LRs) and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kulbhushan Sharma, Advocate for the appellant.

Mr. Mukesh Kumar Mittal, Advocate for the respondents.

ALKA SARIN, J.

The present appeal has been preferred by the decree-holder against the judgment passed by the Appellate Court allowing the appeal filed by the objector-respondents herein.

The brief facts relevant to the present lis are that the decree-holder/appellant filed a suit for permanent injunction against Mahender Kumar and Chhotu Ram to the effect that the plaintiff (decree-holder/appellant herein) was owner in possession of the suit land comprised in the estate of Rewari shown in the site plan with red colour. It was averred that the land was purchased by the decree-holder/appellant vide registered sale dated 13.12.1985 for an amount of Rs.25,000/- and that the defendants in the said suit were threatening to take forcible possession. Vide an ex-parte judgment and decree dated 04.12.1991, the said suit was decreed and the defendants therein were directed to handover the vacant possession of the suit property to the decree-holder/appellant after demolishing the existing construction. When the decree dated 04.12.1991 was not complied with, an execution application was filed by

the decree-holder/appellant. The Executing Court issued warrants of possession against the original judgment-debtors/defendants directing the Bailiff to get the construction demolished and to handover vacant possession to the decree-holder appellant. The Bailiff vide his report dated 15.10.1997 reported that the original judgment-debtors/defendants were not in possession of the suit property and that one Smt. Sarla Devi, objector-respondent herein along with her husband and children, was found to be in possession of the suit property and that they refused to deliver the possession. The objector-respondent, Sarla Devi, preferred objections averring therein that she was owner in possession of the Pakka house as detailed in para-1 of the objection petition and had constructed the aforesaid house on a plot measuring 259 sq.yards equal to 8½ marla which she had purchased from one Mara Ram by dint of registered sale deed dated 25.10.1989. It was stated that even prior to the purchase of property from her vendor Mara Ram, the objector-respondent had been in possession and had already constructed a boundary wall. It was further averred that decree-holder/appellant had got an order of possession despite being aware that the original judgment-debtors/defendants had no concern with the suit property and that the objector-respondent were purposely not impleaded as a party. The decree-holder/appellant contested to the objections and raised the plea that the sale deed dated 25.10.1989 relied upon by the objector-respondent was false and baseless and that the objector-respondent had no right over the suit property in any manner. It was further averred that the sale deed dated 25.10.1989 was a mere paper transaction and that the decree-holder/appellant had purchased the suit property by way of registered sale deed dated 13.12.1985 and mutation had already been sanctioned in his favour. The Executing Court dismissed the objections of the objector-respondent vide judgment dated 29.10.2004 holding

the decree-holder/appellant entitled to the possession of the disputed plot measuring 8½ marlas. Aggrieved by the said judgment, an appeal was preferred by the objector-respondent which was accepted vide impugned judgment dated 16.09.2008. Hence, the present appeal by the decree-holder/appellant.

Learned counsel for the decree-holder/appellant would contend that sale deed in favour of the decree-holder/appellant clearly reflects that the suit property was purchased by the decree-holder/appellant vide sale deed dated 13.12.1985. It is further the contention that the cutting in the sale deed was made at the time of registration and that the land in dispute is 1 kanal and 16 marlas and further that having sold the entire land the vendors of the decree-holder/appellant, Mahender Kumar and Chhotu Ram, were left with no land to sell to Mara Ram. Learned counsel would further contend that the site plan appended with the sale deed and the measurements all reveal that the suit property was purchased by the decree-holder/appellant from his vendors Mahender Kumar and Chhotu Ram and that the cutting in the sale deed needs to be over-looked in view of the description of the property and the measurements given in the site plan.

Per contra, learned counsel for the objector-respondent has contended that the objector-respondent was deliberately not made a party to the suit nor was her vendor Mara Ram impleaded as a party. It is further the contention that the attesting witness of the sale deed in favour of the decree-holder/appellant namely, Ram Pal, had stepped into the witness box as OW-5 and had stated that there was no cutting at the time of registration of the sale deed.

Heard.

In the present case admittedly the suit was filed by the decree-holder/appellant on the basis of the sale deed dated 13.12.1985 (Ex.DH4/1) qua land measuring 1 kanal and 16 marlas. The entire land in the hands of the vendors, Mahender Kumar and Chhotu Ram, was 1 kanal 19 marlas on the basis of the sale deed dated 26.11.1985 executed by one Om Parkash in their favour. The sale deed dated 13.12.1985 executed subsequently by Mahender Kumar and Chhotu Ram in favour of the decree-holder/appellant clearly reveals that there is a cutting in it cutting has only been signed by the one of the parties i.e. Mahender Kumar. Neither the other vendor (Chhotu Ram) nor the vendee (the decree-holder/appellant) has initialed or signed against the cutting. The attesting witness of the said sale deed Ram Pal had stepped into the witness box as OW-5 and had categorically stated that there was no over-writing or cutting when the sale deed was registered. The sale deed dated 23.04.1987 in favour of Mara Ram is qua 8½ marlas of land. The argument of the learned counsel for the decree-holder/appellant is that the description of the property would have to be seen in the present case and that the description in the sale deed executed by Om Parkash in favour of Mahender Kumar and Chhotu Ram on 26.11.1985 has the same description as the property sold by Mahender Kumar and Chhotu Ram on 13.12.1985 in favour of the decree-holder/appellant as depicted in the site plan Ex.DH4/2 and DH4/3. The said argument of the learned counsel deserves to be rejected on the ground that though the sale deed on which there is cutting is qua 1 kanal and 16 marlas of land however the site plan Ex.DHW4/2 appended with the sale deed dated 13.12.1985 Ex.DHW4/1 is qua 1 kanal and 19 marlas of land. Learned counsel for the decree-holder/appellant has not been able to reconcile the said discrepancy nor explain the cutting in the sale deed Ex.DHW4/1. On the other hand, the sale deed dated 25.10.1989 in favour of the

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objector-respondent is qua 259 sq. yards (about 8½ marlas) of land. There is nothing on the record to show that the said sale deed was fraudulently executed. Even if the sale deed Ex.DHW4/1 was to be believed, the site plan appended with the said sale deed does not tally with the sale deed Ex.DHW4/1 which is allegedly for 1 kanal and 16 marlas. Even if the site plan is taken to be correct and there is a typographical mistake in showing the land as 1 kanal 19 marlas even then there is difference of three marlas of land and hence the site plans appended with the sale deed executed by Om Parkash and that executed by Mahender Kumar and Chhotu Ram in favour of the decree-holder/appellant could not have been identical. Learned counsel for the decree-holder/appellant has not been able to convince this Court that the sale deed dated 25.10.1989 in favour of the objector-respondent is fraudulent or that the vendor did not have a good title to the said property.

In view of the above, there is no error or illegality in the impugned judgement. I do not find any merit in the present appeal which is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

14.03.2023

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(ALKA SARIN)

JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO