

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(105)

RSA No. 2803 of 2022 (O&M)

Date of Decision : 22.02.2023

Radhey Sham and another

...Appellants

Versus

Sita Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sandeep K. Sharma, Advocate for the appellants.

Harsimran Singh Sethi J. (Oral)

The present regular second appeal has been filed challenging the judgment and decree of the trial court dated 26.09.2017 by which, the suit filed by the appellants-plaintiffs was dismissed as well as against the order of the lower appellate court dated 30.07.2022 by which, the appeal preferred against the judgment and decree dated 26.09.2017 has also been dismissed.

Before proceeding further, it may be noticed that along with the regular second appeal, the appellants-plaintiffs have also challenged the order passed by the lower appellate court dated 22.07.2022 by which, application filed for tendering additional evidence, was dismissed.

Learned counsel for the appellants-plaintiffs submits that first the challenge to the order dated 22.07.2022 dismissing the application seeking tendering of additional evidence be decided as it will have a bearing on the regular second appeal.

Learned counsel for the appellants-plaintiffs submits that the

contention of the appellants-plaintiff before the courts below was that the property in relation to which the declaration and mandatory relief of permanent injunction was sought, is an ancestral property, belonging to Tota Ram Mahajan. Learned counsel concedes the fact that there was no document produced before the trial court by way of evidence to show that the property was in the name of Tota Ram Mahajan at any given point of time or the same was ancestral but submits that while the appeal was pending before the lower appellate court, an application was filed to tender the additional evidence. The evidence and the documents sought to be brought on record was the house tax assessment receipt of the year 1993. Learned counsel for the appellants-plaintiffs argues that the said application was dismissed on the ground that the original house tax receipt was not produced, which was incorrect.

I have considered the submission of the learned counsel for the appellants-plaintiffs with regard to the application seeking production of additional evidence. Learned counsel for the appellants-plaintiffs conceded that a similar house tax receipt was already on record as Ex. D22. Learned counsel submits that though there is a house tax assessment receipt already on record as Ex. D22 but the documents sought to be presented through additional evidence was of the year 1993 which had a better relevance as compared to the earlier document, which is already on record.

It may be noticed that it is a settled principle of law that house tax assessment does not correlate to the ownership of the premises concerned. Mere depositing of a house tax in the name of a particular entity does not mean that the said document i.e. House Tax Receipt certifies the ownership of the said entity. Keeping in view the said fact, especially that

the house tax receipts of the earlier years were already on record and have already been taken into consideration by the trial court, no infirmity is found in the decision of the lower appellate court dated 22.07.2022 so as to decline the production of additional evidence, sought to be produced being not relevant.

Now, coming to the argument raised qua the challenge to the judgment and decree of the courts below.

Learned counsel for the appellants-plaintiffs concedes the factum that there was no document produced showing the ownership of Tota Ram Mahajan of the property in question. Further, learned counsel conceded that there is no document, which has come on record to show that the property, which Tota Ram Mahajan was allegedly holding, was an ancestral property. Once, the said documents have not been produced before the court below, raising a claim of declaration on the basis of the ancestral property, does not arise as concededly there was no evidence on record to prove the said fact.

The findings have been recorded by the courts below that no material evidence has come on record to substantiate the claim that the property in question was an ancestral property, to be succeeded in a particular manner. In the absence of any perversity being pointed out in the findings of the courts below qua the facts or the evidence, this court in the regular second appeal cannot re-appreciate the evidence on record to come at a different finding.

No ground is made out for interference by this court in the present regular second appeal.

Dismissed.

CM-9649-C-2022

As the main appeal has been dismissed, the present application
also stands dismissed.

February 22, 2023
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No