

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO-2-2024 (O&M)

Date of decision: 23.01.2024

Reserved on: 16.01.2024

Yuvraj Arora and others

....Petitioners

Versus

Bhupinder Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Saksham Mahajan, Advocate for the appellants

ANIL KSHETARPAL, J

1. This Second Appeal has arisen against the order passed by the First Appellate Court on 16.10.2023, which had reversed the order passed by the trial court on 11.04.2018.

2. In substance, the respondent no.1 has filed a suit for the grant of decree of declaration with a consequential relief of permanent injunction. The prayer clause of the plaint reads as under:-

“Hence it is prayed that decree for declaration to the effect that the sale deed bearing Wasika No. 863 dated 6.9.2013 registered with Joint Sub Registrar, Mullanpur Dakha, District Ludhiana executed by plaintiff in favour of defendant no.1 to 3 at the instance of defendant no.4 in respect of land measuring 1B-10B-1-3/10B (Pukhta) comprised in Khata No. 98/102, Khasra No. 35//17/2, as per jamabandi for the years 2010-11, situated at Dakha-1, Tehsil and District Ludhiana is illegal, null and void and is not binding on the rights the plaintiff and is liable to be set aside and also its consequent mutation no. 17696 And further a

decree of permanent injunction restraining the defendants from alienating the suit property by way of sale, mortgage, gift or in any other mode/manner to anybody else and further restraining them from dispossessing and interfering in the peaceful possession of the plaintiff over the suit property illegally, forcibly and otherwise than in due course of law, may kindly be passed in favour of the plaintiff against the defendants, with costs. Any other additional or alternative relief to which the plaintiff is found entitled, the same may also be granted.”

3. In a nutshell, the plaintiff claims that he alongwith his brother entered into an agreement to sell, in favour of defendant no.4 on 09.08.2012 with respect to the land measuring 5 bighas 16 biswas and 8 biswani. As per the agreement to sell, the sale deed was to be executed and registered on or before 13.08.2013. However, defendant no.4 did not honour the agreement. Subsequently, on account of friendly relations, the plaintiff executed as many as four sale deeds in favour of different persons including sale deed number 863 dated 06.09.2013. However, he has only been paid Rs.26,10,000/- although, as per the agreement to sell, the total amount of the sale deed comes to Rs.2,23,12,125/-. It has been alleged that the plaintiff did not deliver the possession of the property and despite repeated requests, the defendants have not paid the entire sale consideration. Subsequently, the plaintiff received summons in a suit filed by Onkarjit Singh and his brother. He met them to tell him to settle the dispute with defendant no.4. Thereafter, the plaintiff met defendant no.4, however, he flatly refused to pay the amount.

4. It was claimed that the plaintiff continues to be in possession of the property and apart from a decree of declaration stating that the sale deed is illegal, null and void, he also sought a decree for permanent injunction restraining the defendants from dispossessing and interfering in his peaceful possession.

5. An application under Order VII rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') was filed on the ground that the plaintiff has not paid ad valorem court fee on the amount of sale consideration and the suit was filed by the plaintiff beyond the prescribed time, which is 3 years from the date of execution of the sale deed. The trial court allowed the application vide order dated 11.04.2018, which, in turn, has been reversed by the First Appellate Court.

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

7. Learned senior counsel representing the appellants while relying upon the judgment passed by the Supreme Court in **Dahiben vs. Arvind Bhai Kalyanji Bhanushali (Gajra) dead through its LRs and others (2020) 7SCC 366** submits that the period of limitation for filing the suit to challenge the sale deed came to an end on 06.09.2016 whereas the suit was filed on 31.05.2017. He further submits that the sale deed has resulted into transfer of title without any precondition and therefore, at the most, the plaintiff's allegation that he has not been paid the entire sale consideration, cannot be a ground to set aside the sale deed.

8. This Court has considered the submissions made by the learned counsel representing the parties and carefully studied the judgment

passed in **Dahiben's case (supra)**. In the aforesaid case, the sale deed was executed on 02.07.2009 whereas the suit was filed on 15.12.2014. As a matter of fact, the court found that the case pleaded by the plaintiff was inconceivable. Subsequently, while relying upon the judgment passed by the Supreme Court in **Vidyadhar vs. Manik Rao (1999) 3 SCC 573** the Court held that the suit filed by the plaintiff was beyond the prescribed period of limitation and therefore, the plaint has rightly been rejected. It may be noted here that the partial rejection of the plaint is not envisaged under Order VII Rule 11 CPC. In this case, the plaintiff (respondent herein) has specifically asserted that he continues to be in possession of the property. He has also sought a decree for permanent injunction restraining the defendants from dispossessing or interfering in his peaceful possession. Even if it is assumed for the sake of argument that the suit filed by the plaintiff to seek cancellation of sale deed on account of non-payment of part of the sale consideration is not maintainable, still his prayer for grant of decree of permanent injunction is not barred by any provision of law. Before rejecting the plaint, the court at the threshold, is required to be certain that the plaint is barred by law. Before passing such order, the court is required to study the complete plaint alongwith all the prayers which have been made. If prima facie the Court finds that the entire claim in the suit is barred by law only then it is permissible for the court to reject the plaint at the threshold. As already noticed, this Court finds that prima facie the prayer made for grant of injunction is not barred by law.

9. In view of the aforesaid facts and discussion, no ground to interfere is made out.

10. Hence, dismissed.
11. Needless to observe that the observations made in this order or by the First Appellate Court shall not be construed as a final expression on the merits of the case.
12. All the pending miscellaneous applications, if any, are also disposed of.

23.01.2024
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(ANIL KSHETARPAL)
JUDGE

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