

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.736 of 2020 (O&M)
Reserved on : 09.01.2024
Date of Decision : 16.01.2024

Ranjit Singh

....Appellant

VERSUS

Gurbachan Singh since deceased through his LR & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Lavish Rattan, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred against the judgments and decrees dated 20.10.2014 and 04.12.2018 passed by the Courts below dismissing the suit filed by the plaintiff-appellant.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant, along with the plaintiff-respondent Nos.2 and 3 herein, filed a suit for declaration to the effect that previously the land in dispute was owned by one Hakumat Rai son of Durga Dass resident of Delhi and after his death it was inherited by his widow and sons, namely, Rita Rani Khanna, Satish Khanna and Sunil Khanna, respectively and was being cultivated by the plaintiffs as tenants and some land was in possession of the defendant-respondent No.1 since long. It was alleged that the plaintiffs and defendant orally agreed to purchase the land in dispute and in July 2000 they paid Rs.1,10,000/- to the vendors by contributing money in four shares. As the plaintiffs were illiterate and only the defendant was literate, so the defendant got the document executed from the vendors by paying the contribution

money. In January 2003 the plaintiffs contributed the remaining sale price and after taking 3/4 share of the sale price from them the defendant got executed the document of title in his name alone. The plaintiffs fell into a trap in good faith and trust and on coming to know about the sham transaction the plaintiffs asked the defendant to transfer their 3/4 share in their name and on his refusal to do so and threats to take forcible possession, the present suit for declaration, possession and permanent injunction was filed.

3. The defendant-respondent No.1 appeared and filed written statement taking objections of locus-standi, cause of action, jurisdiction of the Court. It was stated that the suit was hit by the provisions of Prohibition of Benami Transaction Act, 1988 and that the plaintiffs were estopped from filing the suit against the defendant-respondent No.1 as they had not come to the Court with clean hands. It was pleaded that the plaintiffs had not contributed any share in the total sale price for purchasing the land in dispute and that the defendant had purchased the same from the previous owners who had executed an agreement to sell dated 06.12.2003 regarding 61K-3M of land alongwith Jumla haquq aar wattbanna for sale consideration of Rs.2,25,000/- per acre and Rs.7,50,000/- was paid as earnest money by the defendant vide draft dated 06.12.2013 amounting to Rs.1,90,000/- at the time of execution of the agreement to sell and Rs.5,60,000/- were paid on different occasions through demand draft and Rs.50,000/- in cash and balance sale price was to be paid at the time of execution/ registration of sale deed. A civil suit No.182 dated 03.07.2006 titled as Gurbachan Singh Vs. Rita Rani etc. remained pending and the same was decided on 06.03.2007 on the basis of a compromise and the balance sale price was paid to the previous owners by the defendant in the Court. The sale deed in favour of

the defendant was executed in execution proceedings and that the plaintiffs had not contributed even a single penny in the sale price of the land in dispute. It was also submitted that a civil suit titled Sadhu Singh etc. Vs. Gurbachan Singh for permanent injunction was pending in the Court and in the said suit the defendant filed a written statement and then the plaintiffs therein filed a replication admitting that they had no knowledge about any agreement to sell executed by Rita Rani Khanna etc. in favour of the defendant. The plaintiffs filed a replication.

4. The Trial Court framed the following issues :

1. Whether the plaintiffs are entitled to declaration that they are owners in possession to the extent of 3/4 share in the suit property ? OPP
2. Or in the alternative, they are entitled for possession of 3/4 share out of their suit property ? OPP
3. Whether the plaintiffs are entitled to permanent injunction restraining the defendants from interfering in peaceful possession of the plaintiffs over the suit property as well as restraining from alienating and transferring the same in any manner? OPP
4. Whether the plaintiffs have no cause of action to file the present suit ? OPD
5. Whether the plaintiffs are estopped by their own act and conduct to file the present suit ? OPD

5-A Whether the present suit is hit by the provisions of Prohibition of Benami Transactions Act ? If so, its effect ? OPD

5-B Whether present suit is not properly valued for the purposes of court fee and jurisdiction ? OPD

6. Relief.

5. On the basis of the pleadings of the parties and the evidence on the record, the Trial Court dismissed the suit of the plaintiffs vide judgment and decree dated 20.10.2014. Aggrieved by the decision of the Trial Court, an appeal was preferred only by the present plaintiff-appellant. The said appeal was also dismissed vide judgment and decree dated 04.12.2018. Hence, the present regular second appeal.

6. Learned counsel for the plaintiff-appellant would contend that the Courts below have erred in dismissing the suit on illegal and erroneous grounds and that the parties were in a fiduciary relationship whereunder the plaintiffs had paid their share to the defendant-respondent No.1. It is argued that the litigation between the defendant-respondent No.1 was not within the knowledge of the plaintiffs and any decision therein was also illegal and liable to be set aside.

7. I have heard learned counsel for the plaintiff-appellant.

8. In the present case both the Courts below have concurrently upheld the sale in favour of the defendant-respondent No.1 and negated the stand taken by the plaintiffs. The documentary evidence on the record i.e. bank drafts shows that the amount was paid by the defendant-respondent No.1 alone, who entered into an agreement to sell with Rita Rani etc. The agreement to sell is Ex.D2. Thereafter, he alone filed a suit for possession by way of specific performance in which a compromise was effected between

the parties and judgment and decree was passed which is Ex.D4. The sale deed was got executed through the Court in execution and symbolic possession was got delivered to the defendant-respondent No.1. The plaintiffs have failed to prove that they ever contributed any money or the sale deed was got executed by the defendant-respondent No.1 due to a fiduciary relationship.

9. In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. The concurrent findings of fact recorded by both the Courts below do not call for any interference by this Court. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

16.01.2024
jk

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