

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

128

RSA-1401-2023 (O&M)
Date of decision: 23.05.2024

NARINDER KUMAR

..Appellant

Versus

SHASHI DEVI AND ANOTHER

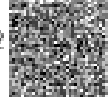
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Virat Rana, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the plaintiff assails the correctness of concurrent findings of fact arrived at by the Courts below while dismissing his suit for possession, declaration, injunction and recovery of mesne profits. In substance, the plaintiff has challenged the correctness of the sale deed executed by defendant No.1 in favour of defendant No.2 on 04.03.2010. The plaintiff claims to be owner of the property on the basis of a consent judgment and decree dated 23.02.1991 in between him and other family members.
2. Upon appreciation of evidence, both the Courts have come to a conclusion that the plaintiff has failed to prove any document of title in his favour.
3. This Bench has heard the learned counsel representing the appellant at length and with their able assistance perused the paperbook.
4. The learned counsel representing the appellant has passed on a print out of property tax notice-cum-bill and a certificate issued by Secretary, Municipal Committee to assert that the plaintiff has proved his title. He



further submits that defendant Ms. Shashi has failed to prove ownership of her father. Hence, the plaintiff's suit should have been decreed. In the alternative, he submits that he should be permitted to withdraw the suit with a permission to file fresh one.

5. This Court has considered the submissions of the learned counsel representing the appellant.

6. In a regular second appeal, if an additional document is sought to produced in additional evidence, an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), is required to be filed. In any case, the property tax notice and the certificate issued by the Secretary, Municipal Committee do not assert a proof of ownership. The plaintiff came to the Court with specific stand that he is the owner of the property. He was required to prove the same particularly when there was a registered sale deed in favour of defendant No.1. The plaintiff is required to stand on his own legs. He has to prove that he is owner and therefore, entitled to relief of possession. He claims that the property was originally owned by his grand-father, however, he failed to produce any document to prove the same. Moreover, the plaintiff cannot depend upon the weakness in the evidence of the defendants.

7. With regard to the last prayer of the learned counsel representing the appellant, it may be noticed that under Order XXIII Rule 1 of the CPC, the permission to file fresh suit on same cause of action can be granted only if the suit is liable to be dismissed on a formal defect.

8. In this case, the learned counsel representing the appellant has failed to draw the attention of the Court to any such formal defect. Hence,

the documents produced by the learned counsel representing the appellant have been returned to him.

9. Consequently, the appeal is dismissed accordingly.
10. All the pending miscellaneous applications, if any, are also disposed of.

May 23rd, 2024 (ANIL KSHETARPAL)
Ay JUDGE

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