2024:PHHC:163969

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4607-2018 (O&M)
Reserved on : 19.11.2024
Pronounced on : 10.12.2024

Ashok Kumar ....Appellant

VERSUS

Subhash Chander & Anr. ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sanjay Jain, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant against the judgements and decrees dated 27.01.2014 and 28.10.2017 passed by the Trial Court and the First Appellate Court dismissing his suit for mandatory injunction.

2. The suit was filed by the plaintiff-appellant averring that the suit land was purchased by him vide sale deed dated 27.10.1960 from Triloki Nath through his attorney Har Narayan. At that time the suit land fell in Khasra No.461 in lieu of which new Khasra No.26/4/3 was allotted. Mutation was sanctioned in his favour on 11.07.2007 and he was also recorded as owner of the suit land in the jamabandis for the years 2003-04 and 2007-08. The plaintiff-appellant claimed that he had got the suit land demarcated and filled the foundations but in his absence the defendant-respondents took forcible possession of the suit land and raised construction

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on it. Hence, the suit for mandatory injunction for directing the defendant-respondents to handover the actual, physical and vacant possession of the suit land after removing the construction with a consequential relief of permanent injunction. The defendant-respondents in their written statement raised preliminary objections regarding maintainability, locus standi, etc. It was submitted that the plaintiff-appellant had only purchased a share in the total holding of the vendor and that no specific portion was sold to him as the sale deed in favour of the plaintiff-appellant did not mention any dimensions. It was claimed that the defendant-respondents had raised construction on plots purchased by them vide sale deeds dated 15.09.1969 and 01.07.2005 and that they had obtained water, electricity and sewerage connections and were also paying house tax.

3. From the pleadings of the parties following issues were framed :

1. Whether plaintiff is entitled for possession of the suit property ? OPP

2. Whether the present suit is not maintainable in the present form ? OPD

3. Whether the plaintiff is not coming to the Court with clean hands ? OPD

4. Relief.

4. Vide judgement and decree dated 27.01.2014 the Trial Court dismissed the suit of the plaintiff-appellant. The appeal of the plaintiff-appellant was also dismissed by the First Appellate Court vide judgement

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and decree dated 28.10.2017. Hence, the present regular second appeal by the plaintiff-appellant.

5. Learned counsel for the plaintiff-appellant has contended that both the Courts have erred in dismissing his suit. It is urged that the suit land was purchased by him and that he was forcibly dispossessed by the defendant-respondents. Learned counsel has contended that the sale deed in his favour is on the record as Ex.PB while the mutation in his favour is on the record as Ex.PA. It is urged that the suit of the plaintiff-appellant deserved to be decreed.

6. Heard counsel for the plaintiff-appellant and perused the record.

7. In the present case the plaintiff-appellant averred in his plaint that he had purchased a plot falling in Khasra No.461 which had been given a new Khasra No.26/4/3. However, there is no revenue record produced showing that the plaintiff-appellant was ever in possession of Khasra No.461. There is also no revenue record or other evidence to prove that the old Khasra No.461 had been given new Khasra No.26/4/3. Only the length and breadth of a plot are mentioned in the sale deed Ex.PB. Where exactly in Khasra No.461 the plot purchased by the plaintiff-appellant falls is not forthcoming on the record. Further, there is discrepancy in the dimensions of the plot purchased by the plaintiff-appellant as given in the sale deed Ex.PB and as given in the plan Ex.PW2/A. While the sale deed mentions the dimension as 18ft in the North, the plan shows 17ft 8in in the North. Similarly, the sale deed mentions the dimension as 18ft in the South, the plan shows 20ft 6in in the South. Both these documents have been produced

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by the plaintiff-appellant and learned counsel is unable to explain the difference in the dimensions. Thus, it cannot be established that the area in possession of the defendant-respondents is part of the plot purchased by the plaintiff-appellant. At best the plaintiff-appellant is a co-sharer and his remedy is to seek partition of his share. Learned counsel for the plaintiff-appellant is unable to point to any cogent and reliable evidence on the record to dislodge the concurrent findings recorded by both the Courts. In the absence of such reliable evidence, the findings recorded by both the Courts cannot be faulted. No other point was argued.

8. In view of the above, no mistake or error of law or facts can be found with the judgments and decrees passed by both the Courts. 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.

10.12.2024 **(ALKA SARIN)**
Ankur **JUDGE**

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No

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