

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

106 RSA-5766-2017 (O&M)
Date of Decision: 16.01.2024.

Santokh Singh ...Appellant.
Versus
Ranjit SinghRespondent.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. R.S. Chauhan, Advocate for the appellant.

Sukhvinder Kaur, J.
CM-15266-C-2017

Prayer made in the application is for condonation of delay of 25 days in re-filing of the appeal.

Keeping in view the averments made in the application the delay of 25 days in re-filing the appeal is condoned.

CM stands disposed of.

Main case

The instant Regular Second Appeal has been filed by the appellant/ defendant against the concurrent findings recorded by both the Courts below vide which suit of the plaintiff was decreed.

2. Brief facts of the case as per plaint are that the parties are residing at village Mankya, Tehsil and District Panchkula. Plaitiff is owner in physical possession of Gair Mumkin Bara as detailed in the head note of the plaint. The entries were incorporated in the revenue record in favour of the plaintiff regarding the suit land on the basis of Mutation No.1931.

Earlier suit land was owned by Garibu and after his death, the same was inherited by the plaintiff and Mutation No.1931 was sanctioned in his favour. It has been alleged that the defendant has no right, title or interest in the suit land, but he is threatening to interfere in the peaceful possession of the plaintiff over the suit land and on 19.05.2013, he attempted to dispossess the plaintiff from the suit land. But with the timely intervention of the plaintiff and other respectable of the locality, he could not succeed.

3. The Trial Court vide judgment and decree dated 16.03.2016, decreed the suit of the plaintiff. Aggrieved against the same the defendant/appellant filed the appeal before the First Appellate Court, which was dismissed, vide judgment dated 10.01.2017. So, now the defendant/appellant has knocked the doors of this Court by way of filing the present Regular Second Appeal.

4. Learned counsel for the appellant/defendant has contended that both the Court below have ignored the fact that the suit land was purchased by Ajmer Singh, the father of the appellant/defendant, from Shamsheer Singh son of Narata Singh, who was grandson of Gribu, on 27.07.1986, for a sale consideration of Rs.2,000/-. Said Garibu died on 09.01.1980 but the suit land kept standing in his name in the revenue record. Taking the undue advantage of the same respondent/plaintiff forged and fabricated a Will alleged to be executed by Garibu regarding the suit land in his favour and got sanctioned the mutation on the basis of the alleged Will in his name, after 32 years of death of Garibu and thereafter, he filed a suit for permanent injunction. He has contended that the plaintiff is well aware of the fact that the appellant/defendant is in possession over the suit land since 1986. He

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has also submitted that the appellant/ defendant has proved his possession over the suit land by leading the oral evidence and by producing writing dated 27.07.1986 as Ex.DW3/2 vide which the suit property was purchased and possession was taken by Ajmer Singh, father of the appellant/defendant. Besides that he has also proved on record mark A-1 to D-1, photographs of the suit land and Mark E-1, photocopy of bill dated 02.08.2012 regarding purchase of bricks for raising boundary wall over the suit land. He has submitted that all these documents have been wrongly ignored by the Courts below.

5. I have heard learned counsel for the appellant and gone through the record thoroughly.

6. There is concurrent findings of both the Courts below that the plaintiff is in possession over the suit land and defendant has been restrained from interfering in possession of the plaintiff over the suit property except in due course of law.

7. In order to prove his possession over the suit land plaintiff has produced on record jamabandies for the year 2013-2014 and 2008-2009 as Ex.P-1 and Ex.P-4 respectively. The perusal of the revenue record reveals that the entry regarding his ownership and possession over the suit land has been duly incorporated in the revenue record on the basis of the Mutation No.1931, which had been sanctioned on 31.07.2012. Copy of the said mutation No.1931 was also placed on record by the plaintiff as Ex.P-2, which reveals that mutation was sanctioned in his favour regarding the suit land, on the basis of an unregistered Will dated 07.06.1979 executed by Garibu, who died on 19.01.1980. This fact is not denied by the defendant

that earlier Garibu was the owner of the suit land, as the said fact is also mentioned in the document Ex.D3/2, vide which he claims to have allegedly purchased the suit land from Shamsher Singh son of Narata Singh. Though, it has been alleged by the defendant that mutation in question was got sanctioned by the plaintiff in connivance with the revenue authorities, but this mutation has not been assailed either by filing a counter-claim or by filing any separate suit in this regard.

8. By virtue of writing Ex.D3/2 the father of the defendant had allegedly purchased the suit land from Shamsher Singh son of Narata Singh on 27.07.1986 for Rs.2,000/-. If property more than Rs.100/- is purchased then such transaction is required to be executed by virtue of some registered document. As writing Ex.D3/2 is an unregistered document so the said writing was not considered by the Courts below to hold the possession of the defendant over the suit property. The defendant has alleged that Shamsher Singh was the vendor of the suit land from whom his father Ajmer Singh had purchased the suit land. But nothing has been produced on record in order to prove that said Shamsher Singh had ever been the owner in possession over the suit land. As per the writing Ex.D3/2, some Will had been executed by Garibu, the owner of the suit land in favour of Shamsher Singh and father of the defendant had purchased the suit land from Shamsher Singh, on the basis of the said Will. But the alleged Will executed by Garibu in favour of Shamsher Singh has not been produced on record. Even no such revenue record has been produced where entry regarding any such Will executed by Garibu in favour of Shamsher Singh has been incorporated. So on the basis of writing Ex.D3/2, it cannot be held that

defendant or his father had been in possession over the suit land.

9. The receipt (Mark E-1), vide which the defendant claims to have purchased the bricks for raising construction of the boundary wall over the suit land in dispute is concerned it also, cannot be relied upon, as defendant has admitted in his cross-examination that 6000 bricks were used for construction of the boundary wall over the suit land, whereas receipt (Mark E-1) is regarding 4000 bricks only. There is nothing to suggest that the bricks purchased vide receipt (Mark E-1) were used for raising construction of the boundary wall over the suit land and not for some other purpose. The Courts below have rightly granted permanent injunction to the plaintiff when he has succeeded to prove his possession over the suit land on the basis of the revenue record in the form of jamabandies for the year 2008-2009 and for the year 2013-2014 and the defendant has been rightly restrained from interfering in possession of the plaintiff over the suit land except in due course of law.

10. For the reasons recorded above, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

11. Appeal stands dismissed.

12. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

16.01.2024.

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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No