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RSA-955-2015 (O&M)

[119] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-955-2015(O&M)
Date of Decision : 05.02.2025

Amar Singh Yadav (now deceased)
through his LRs ...Appellants

versus

Manish and othersRespondents

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Vivek Aggarwal, Advocate with
Mr. Kewal Krishan, Advocate
for the appellants.

Mr. Manoj K. Sood, Advocate
for respondent No.2.

PANKAJ JAIN, J. (ORAL)

[1] Plaintiff(s) are in second appeal, aggrieved of judgment and decree passed by the Courts below.

[2] Parties are hereinafter referred to by their original position(s) as in the Civil Suit i.e. appellants as plaintiffs and respondents as defendants.

[3] Suit was filed by the plaintiff restraining defendants from interfering into their peaceful possession, claiming that he purchased land measuring 60 sq. yards forming part of joint khewat, total measuring 65 kanals 03 marlas from one Ram Pal, acting as Attorney of Jasrath and Smt. Shiv Dei vide sale deed dated 18.05.1990.

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[4] Plaintiffs claimed to have constructed and completed construction over the portion marked as 'ADGH' in the site plan as attached to the plaint. It was further claimed that land measuring 13 sq. yards marked as 'AFED' was under his possession by way of agreement to sell dated 18.12.2003 executed by Ram Pal, Attorney holder of Jasrath and Smt. Shiv Dei for a consideration of Rs.17,000/-. Boundary wall has been constructed over 13 sq. yards land. Plaintiffs claimed land being legal heirs of deceased Amar Singh Yadav.

[5] Suit was contested by the defendants, claiming that Suman Devi wife of defendant No.2 is an absolute owner in possession of a plot admeasuring 72 sq. yards purchased by her vide registered sale deed dated 02.07.2008. The same is adjacent to the plot of plaintiff(s). Plaintiff(s) has procured fictitious agreement with respect to 13 sq. yards land.

[6] On the basis of the pleadings, Court of the first instance framed the following issues:-

1. *Whether the plaintiffs is owner in possession over land measuring 173 Sq. yds. described in Para No.1, 2 and 3 of the plaint ? OPP*
2. *Whether the plaintiff is entitled to a decree of permanent injunction as prayed for ? OPP*
3. *Whether the suit is not maintainable in present form? OPD*
4. *Whether the plaintiff has no cause of action file the present suit? OPD*
5. *Whether the plaintiff is stopped by his own act and conduct from filing the present suit ? OPD*
6. *Relief."*

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[7] While returning findings, Court of the first instance came to the conclusion that the boundaries of plot sold to plaintiff have not been described in sale deed (Ex.P-3/1). To prove sale deed, plaintiff examined PW-2/Ram Pal, who is power of attorney holder of the vendors of both the parties to the suit and Ram Saroop from whom plaintiff allegedly purchased one plot measuring 60 sq. yards vide sale deed dated 04.10.1996 (Ex. P-3/1). PW-2/Ram Pal deposed that he had sold 60 sq. yards of land in favour of plaintiff(s) vide sale deed dated 11.09.1990 and possession was delivered to Amar Singh. However, agreement to sell *qua* 13 sq. yards was denied by Ram Pal and no effort was made by plaintiff(s) to cross-examine Ram Pal on the said issue. Resultantly, the Court found that though plaintiff(s) were able to prove sale deed (Ex. P-3) but could neither prove sale deed (Ex.P-3/1), nor agreement to sell (Ex. P-5). Resultantly, the Courts below dismissed the suit filed by the plaintiff(s).

[8] The aforesaid findings stand affirmed by the Lower Appellate Court.

[9] Learned counsel for the appellants, while assailing the impugned judgment and decree passed by the Courts below submits that there is a presumption in favour of the registered sale deed. The Courts below ought not have disbelieved Exhibit P-3/1 to non-suit the plaintiff(s).

[10] *Per contra*, Mr. Sood, counsel for respondent No.2 submits that there is no evidence on record to show that the plaintiff(s) was put in possession of a specific portion of land pursuant to sale deed (Ex.P-3/1), thus, instant suit filed by the plaintiff(s), seeking decree of permanent

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injunction was not maintainable. In order to support his contentions, he relies upon '**Ramdass versus Sitabai and others**', reported as 2009(8) JT 224.

[11] I have heard counsel for the parties and have carefully gone through records of the case.

[12] The dispute in the instant suit relates to plot, which is subject-matter of sale deed dated 04.10.1996 (Ex.P-3/1) and the land which is subject-matter of agreement to sell (Ex.P-5). Courts below have returned concurrent finding of fact that the defendants proved sale deed (Ex.D-2) in favour of his wife, executed by Gangotri Parshad, to whom the plot was sold by sale deed (Ex.D-1) by none else, but the vendors of Ram Saroop. The plot has been sold by boundaries. So far as sale deed (Ex.P-3/1) is concerned, there is no boundary mentioned and the plot has been described only as a share out of a joint khewat ad-measuring more than 65 kanals. There is no evidence on record to suggest that the vendor of the plaintiff(s) was in possession of a specific portion of land, which he handed over to the plaintiff(s).

[13] In view thereof, this Court does not find any reason to interfere in the present appeal, the same is ordered to be **dismissed**. However, it is clarified that the findings relate to plot, which is subject-matter of sale deed (Ex.P-3/1). So far as plot subject-matter of sale deed (Ex.P-3) is concerned, the same even finds mention in the sale deed propounded by the defendants (Ex.D-2).

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[14] All pending miscellaneous application(s), if any, stands *disposed off*.

(PANKAJ JAIN)
JUDGE

05.02.2025

'R. Sharma'

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