
(2010) 03 P&H CK 0296

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Dinesh Kumar and
Another

APPELLANT

Vs

Smt. Neelam Handa
and Others

RESPONDENT

Date of Decision: March 12, 2010

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Mahesh Grover, J.

C.M. No. 8643-C of 2009

1. The application is allowed and the delay of 25 days in the refiling of the appeal is condoned.

C.M. No. 8644-C of 2009

2. The application is allowed as prayed for.

R.S.A. No. 2886 of 2009

3. This Regular Second Appeal by the defendants is directed against the judgments and decrees dated 23.2.2006 and 31.10.2008 passed respectively by the Civil Judge (Junior Division), Jalandhar (referred to hereinafter as `the trial Court") and the Additional District Judge, Jalandhar (for short `the first appellate Court").

4. The plaintiff/respondent No. 1 filed a suit pleading therein that she is owner in possession of the suit property, which she has purchased from one Jatinder Nath vide sale deed dated 31.3.1994 for a total consideration of Rs. 10,000/-. The property was

described therein and while filing the suit, the plaintiff/respondent No. 1 also submitted a site plan depicting the property in question. It was also pleaded by the plaintiff/respondent No. 1 that Jatinder Nath had inherited this property from his forefathers, who had at an earlier point of time purchased the same from Chamba Ram in the year 1928.

5. The defendants/appellants contested the suit and denied the ownership of the plaintiff/respondent No. 1. They set up a plea that their forefathers had purchased this property in the years 1892 and 1896. They denied the sale deed dated 31.3.1994 in favour of the plaintiff/respondent No. 1.

6. The following issues were framed:

1. Whether the plaintiff is owner in possession of the suit property? OPP.

2. Whether in the alternative the plaintiff is entitled to the possession of the suit property as alleged? OPP.

3. Whether the plaintiff is entitled to the declaration as prayed for? OPP.

4. Whether the site plan filed by the plaintiff is not as per spot? OPD.

5. Relief.

7. Both the Courts decreed the suit of the plaintiff/respondent No. 1.

8. Aggrieved by the said findings, the instant Regular Second Appeal has been filed by the defendants/appellants.

9. Learned Counsel for the appellants has referred to sale deed of the year 1928 to contend that the suit property is not the same, which was purchased in the year 1928 as the description of the property in the sale deed of the year 1928 and the one, which has been given in the site plan, do not tally.

10. I have heard learned Counsel for the appellants and have perused the impugned judgments.

11. In the considered opinion of this Court, the previous history of the property as having devolved upon Jatinder Nath, the vendor, who sold the property to the plaintiff/respondent No. 1, is not germane to the controversy. It is not the claim of the appellants that Jatinder Nath had no proprietary rights and was not competent to execute the sale deed. The plea was merely taken up in defence to deny the sale deed of the year 1994. The plaintiff/respondent No. 1 has pleaded and proved the execution of the sale deed executed in the year 1994 in her favour. The document is on record as Ex.P-1. The site plan produced depicting the suit property is the same as has been described in the sale deed as Ex. P-1. The appellants, who had disputed the claim of the plaintiff/respondent No. 1 by pleading that it is not the same property as had been inherited by Jatinder Nath

from his forefathers, who had purchased it in the year 1928, have not established any such aspect of the matter. They had in turn set up a plea that their forefathers had purchased this property in the years 1896 & 1892 and they have been unable to show that this suit property is the same, which was the subject matter of the sale deeds of the years 1896 & 1892. In any eventuality, this is purely a question of fact, which has been determined by the Courts, which in the given set of circumstances, cannot be termed to be erroneous so as to warrant any interference in a Regular Second Appeal when no substantial question of law, has arisen for determination therein.

12. No ground to interfere.

13. Dismissed.

14. The application for stay is also dismissed in view of above.