

(2013) 08 P&H CK 0796

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2300 of 2013 O and M

Sheo Singh

APPELLANT

Vs

Jagmal Singh and Others

RESPONDENT

Date of Decision: Aug. 2, 2013

Hon'ble Judges: Vijender Singh Malik, J

Bench: Single Bench

Advocate: Mohnish Sharma, for the Respondent

Final Decision: Dismissed

Judgement

Vijender Singh Malik, J.

This regular second appeal has been brought by the plaintiff who could not succeed before the trial court as well as the first appellate court. The plaintiff-appellant brought a suit for declaration to the effect that the sale deed dated 31.5.2002 executed by defendant No. 1 in favour of defendant No. 2 in respect of plot measuring 967 sq. yards [8700 sq. feet] situated at village Patrehri, Tehsil Naraingarh, District Ambala, properly detailed in the headnote of the plaint [for short, "the suit property"] for a consideration of Rs. 1,16,500/- is illegal, null and void, non est and is liable to be set-aside being a sham transaction and the plaintiff and his family members are the owners and in actual physical possession of the suit property. He has also sought the relief of permanent injunction restraining defendant No. 2 from interfering in his peaceful and lawful possession over the suit property and from dispossessing him forcibly or illegally. The plaintiff has claimed that he and his family members were owners in actual physical possession of the suit property. The suit property was claimed to be used for parking trolleys, harrows and putting manure etc. Defendant no. 1 was never owner nor was ever in possession of the suit property. The sale deed executed by him of the suit property in favour of defendant No. 2 is claimed to be illegal, null and void, NON EST and not binding on the plaintiff. After the sale deed dated 31.5.2002, defendant No. 2 filed a civil suit for permanent injunction against the plaintiff and others which is pending.

The plaintiff filed written statement in the said suit and the court ordered the parties in the same to maintain status quo. Local Commissioner was appointed thereafter who also supported the case of the plaintiff over the suit property. The plaintiff requested the defendants to cancel the said sale deed, but to no effect and hence, the suit.

2. Contesting the suit, the defendants have denied the plaintiff to be owner or in possession of the suit property. It is claimed that defendant No. 1 had been in possession of the suit property before partition of the country and was using the same for the purposes ancillary to agriculture. It is claimed that while selling the suit property, defendant No. 1 delivered possession of the same to defendant No. 2 and thereafter defendant No. 2 is owner in possession of the same. It is further claimed that before execution of the sale deed, defendant No. 1 had sold away over half a dozen fully grown kikkar trees from the suit property. The plaintiff is denied to have any concern with the suit property and, hence, suit was prayed to be dismissed.

3. On the pleadings of the parties, learned trial court settled the following issues:

1. Whether the sale deed dated 31.05.2002 executed by defendant No. 1 in favour of defendant No. 2 is illegal, null and void and is not binding upon the rights of the plaintiff? OPP

2. Whether the plaintiff and his family members are owner in possession of the suit property? OPP

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD

4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD

5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD

6. Relief.

4. Parties led their respective evidence, Issues No. 1 and 2 have been taken up together and it has been held by learned trial court that there is no illegality or infirmity in the sale deed. Deciding other issues against the defendant, the suit was held to have failed and was dismissed with costs by learned Additional Civil Judge [Senior Division], Naraingarh vide judgment and decree dated 17.4.2010.

5. As already said, the appeal preferred by the plaintiff-appellant failed before learned Additional District Judge, Ambala vide judgment and decree dated 29.11.2012.

6. Learned counsel for the appellant has submitted that defendant No. 1, Jhandu Ram has died. According to him, he was required to prove his title to the suit property. According to him, he has sold the suit property to defendant No. 2 and he

was required to prove his title thereto being vendor of Hem Singh.

7. Learned counsel for the appellant has forgotten that it had been a suit brought by Sheo Singh, plaintiff-appellant. In order to succeed in the suit, he was to prove that he is owner of the suit property. Possession was not to be proved separately because it is an open plot in which case possession would follow the title. The plaintiff who was challenging a sale deed regarding the suit property executed by defendant No. 1 in favour of defendant No. 2 was required to establish his title to the suit property to prove that defendant No. 1 was not holding any title to the suit property and the sale deed executed by him regarding the suit property is illegal, null and void. On being questioned, learned counsel for the appellant could not point to any evidence vide which the plaintiff has been able to establish his title over the suit property before the courts below. In this view of the matter, I find no substance in the appeal filed by the plaintiff-appellant. Moreover, no questions of law much less substantial questions of law arise in this appeal. Consequently, the appeal has no merit and is dismissed in limine.