

Question. the Documents Upon Which the Vs. Deep Singh and ors.

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Court : Punjab and Haryana

Decided On : Mar-24-2014

Appellant : Question. the Documents Upon Which the

Respondent : Deep Singh and ors.

Judgement :

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
Rs.No.649 of 2013(O&M) Date of decision: 24.03.2014 Jagan Nath
.....Appellant(s) Versus Deep Singh & ors.....Respondent(s) CORAM:- HON'BLE
MR.JUSTICE RAKESH KUMAR GARG * * * Present: Mr.Narinder Sharma,
Advocate for the appellant.

Rakesh Kumar Garg, J.

This is plaintiff's second appeal challenging the judgements and decrees of the Courts below whereby his suit for permanent injunction restraining the defendant-respondents from taking forcible possession of the suit property except in due couRs.of law or interfering in his peaceful possession over the land in dispute was dismissed.

The case of the appellant is to the effect that Gram Panchayat of village Mallomajra allotted a piece of land measuring one biswa (50 sq.

yards) to his father, namely, Pritam Singh, who died 30 years ago.

A resolution regarding allotment of land to the deceased father of the plaintiff was passed by the Gram Panchayat on 23.2.2008.

The above piece of land was allotted to the landless villagers for the purpose of keeping the dung of cattle in the village and prepare the fuel wood for the domestic use.

The defendants have neither any right to take forcible possession of the land nor have any right to construct any wall over the land of the plaintiff illegally or to interfere in his peaceful possession.

Hence, the suit.

Defendants No.1 and 2 filed joint written statement denying all the averments of the plaint and making prayer for dismissal of the suit.

It Saini Pushpinder 2014.03.27 16:27 I attest to the accuracy and integrity of this document High Court Chandigarh was specifically averred that suit was not maintainable in the present form and was barred under the provisions of Section 3 of Punjab Village Common Lands (Regulation) Act, 1961 and civil court had no jurisdiction.

On merits, it was denied that piece of land measuring 50 sq.

yards was allotted to the father of the plaintiff by the Gram Panchayat.

Ownership of the plaintiff over the piece of land was denied.

It was stated that no mutation was sanctioned in his name till date.

Rest of the averments were denied and dismissal of the suit was prayed.

Respondent No.3 in its separate written statement raised various preliminary objections including that the suit was not maintainable in the present form.

It was denied that any piece of land was allotted to the father of the plaintiff and thus, dismissal of the suit was prayed.

The trial Court vide its judgement and decree dated 25.8.2011 dismissed the suit.

Feeling aggrieved from the aforesaid judgment and decree of the trial Court, the plaintiff filed an appeal before the FiRs.Appellate Court which was also dismissed vide impugned judgment and decree dated 14.9.2012.

While dismissing the appeal, the FiRs.Appellate Court observed as under: It is the case of the plaintiff that the suit land was allotted to his deceased father by the Gram Panchayat vide resolution dated 23.2.2008 and he is in peaceful possession over the suit land.

However, the plaintiff appellant failed to prove his case by leading cogent and convincing evidence.

He has not been able to prove the said resolution and his possession over the land in question.

The documents upon which the Saini Pushpinder 2014.03.27 16:27 I attest to the accuracy and integrity of this document High Court Chandigarh plaintiff/appellant is relying upon are not proved on record.

The plaintiff tendered these documents along with his affidavit and the same are marked documents.

The perusal of the lower court record reveals that no effort was made by the plaintiff to prove these documents as per law.

After completion of his testimony, the evidence was closed by the learned counsel for the plaintiff.

By no stretc.of imagination, findings can be recorded that the said documents were earlier not in the knowledge of the appellant.

The contentions of the learned counsel for the appellant that inadvertently the appellant was not able to prove the said documents, cannot be accepted.

Even there is nothing on record to suggest that thereafter any request was made by the appellant to the learned trial court to lead evidence to prove the documents.

So I do not find merits in the contentions of the learned counsel for the appellant to remand back the case for trial and thereby affording an opportunity to the appellant to prove his case.

So in view of the above discussion, here it is sufficient to say that the appellant has not been able to prove his case.

Therefore, no case is made out to interfere in the findings of the learned trial court upon issue No.1 The findings of the learned trial court upon the issues No.2 to 4 are not assailed in the present Saini Pushpinder 2014.03.27 16:27 I attest to the accuracy and integrity of this document High Court Chandigarh appeal. Still not satisfied the plaintiff-appellant has filed the instant appeal submitting that the following substantial questions of law arise in this appeal: I.

Whether the courts below have misread the evidence on the record?.

II.

Whether the findings given by the learned Courts below are perverse and contrary to the evidence on record?.

III.

Whether the learned courts below was justified in dismissing the suit/appeal without taking decision on the application under order 39, Rule 2 of CPC?.

IV.

Whether the courts in a case of permanent injunction regarding possession could see and decide the possession of the party and not the title?. V. Whether the courts below have ignored the evidence on record proving lawful possession of the appellant?.

VI.

Whether un-rebutted evidence/facts on record required/needs to be proved?..

Counsel for the appellant has vehemently argued that the Courts below have erred while holding that the plaintiff has failed to prove his possession over the land in dispute and has totally overlooked the revenue record on the case file.

It is the further case of the appellant that in a suit for permanent injunction, the court has not to see the title of the Saini Pushpinder 2014.03.27 16:27 I attest to the accuracy and integrity of this document High Court Chandigarh party but to decide the dispute on the basis of the possession.

In the instant case, the possession of the appellant is proved from the revenue record and a presumption of truth is attached to the same which has not been rebutted and in view of the aforesaid unrebutted documents showing possession of the plaintiff, the impugned judgements and decrees of the Courts below are liable to be set aside.

The argument raised is liable to be rejected outrightly.

No doubt, the appellant has relied upon various jamabandis, ration card resolutions etc.by placing them on record but all these documents have not been proved in accordance with law.

Mere placing the documents on record is not sufficient to substantiate the case of the plaintiff.

It is a matter of record that the plaintiff has merely tendered these documents along with his affidavit and the same are marked documents.

No effort was made by him to prove these documents as per law.

Neither the documents have been legally exhibited on record nor the contents of the aforesaid documents have been proved.

In view thereof, no fault can be found with the findings so recorded by the Courts below.

Thus, no substantial question of law arises in this appeal.

Dismissed.

March 24, 2014 (RAKESH KUMAR GARG) ps JUDGE Saini Pushpinder
2014.03.27 16:27 I attest to the accuracy and integrity of this document High Court
Chandigarh CM No.1801-C of 2013 in Rs.No.649 of 2013 Jagan Nath Versus
Deep Singh & ORS.Present: Mr.Narinder Sharma, Advocate for the applicant-
appellant.

Application is allowed subject to all just exceptions.

March 24, 2014 (RAKESH KUMAR GARG) ps JUDGE Saini Pushpinder
2014.03.27 16:27 I attest to the accuracy and integrity of this document High Court
Chandigarh

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