

Punjab-Haryana High Court

Pawan Kumar vs Saroj Bansal And Another on 7 July, 2009

Regular Second Appeal No. 2213 of 2009

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No. 2213 of 2009

Date of Order: 07.07.2009

Pawan Kumar

....Appellant

Versus

Saroj Bansal and another

..Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA Present: Mr.Ashish Grover,Advocate for the appellant.

RAJIVE BHALLA, J (Oral).

The appellant challenges judgments and decrees dated 17.03.2008 and 04.02.2009, passed by the Additional Civil Judge (Senior Division), Bathinda and the Additional District Judge, Fast Track Court, Bathinda, decreeing the suit filed by respondent no.1 and dismissing the appeal filed by the appellant.

The plaintiff/respondent no.1 filed a suit for possession of one room in House No.1708, Street No.4, Nai Basti, Bathinda on the plea that she purchased 90 Sq. Yds. out of this property from Kaur Chand vide registered sale deed No.4377 dated 08.10.1998. The vacant possession of the house except the room in occupation of the appellant was handed over to her. It was prayed that as the appellant has no right or interest in the suit property, a decree for possession be passed.

In opposition to the averments in the plaint, the appellant raised various objections but, on merits, pleaded that he is son of Kaur Chand and along with his brothers and sisters constitute a Hindu Undivided family. The room in his possession was constructed out of joint family funds and was allotted to him pursuant to an oral family settlement.

On the basis of pleadings of the parties, trial court framed the following issues and thereafter called upon the parties to lead evidence:-

"1. Whether the plaintiff is entitled to the possession of the suit property?OPP

2. Whether the suit is not maintainable in the present form?OPD

3. Whether the plaintiff has no locus standi to file the present suit?OPD 3(a) Whether suit is not properly valued for the purpose of court fee and jurisdiction?OPD 3(b) Whether defendants have become owners by way of adverse possession as alleged?OPD 3(c) Whether suit is bad for non-joinder and mis-joinder of necessary parties?OPD 3(d) Whether H.No.1708 is co-parcenary and joint hindu family property of def. no.1 & 2 along with some other persons, as alleged?OPD 3(e) Whether the sale deed is illegal and without consideration, as alleged? OPD

4. Relief."

After considering the pleadings, the evidence adduced and arguments addressed , the trial court held that respondent no.1 was owner of the entire property, including the room occupied by the appellant. It was also held that the appellant had failed to prove that the room was constructed out of joint family funds or that pursuant to a family settlement the room fell to his share. Consequently, the suit for possession was decreed.

Aggrieved by the aforementioned judgment, the appellant filed an appeal. The Additional District Judge, Bathinda, affirmed the findings recorded by the trial court and dismissed the appeal.

Counsel for the appellant submits that the courts below were not justified in rejecting the statements of DW2 Prem Lata and DW3 Pawan Kumar. They have deposed that as the suit property is ancestral coparcenary property, and the room in dispute fell to the appellant's share, during a family settlement. It is further argued that as these witnesses have also deposed that the property was constructed out of the Hindu Undivided Family Funds, the courts below erred in decreeing the suit.

I have heard counsel for the parties, perused the impugned judgments and express my inability to accede to the arguments raised by counsel for the appellant. It would be necessary to mention here that the courts below are concurrent in their opinion that the suit property was purchased by Kaur Chand vide registered sale deed No.1259 dated 31.05.1962 and was, therefore, his self acquired property. As regards the room in the appellant's possession, both the trial court and the first appellate court have negatived his assertion that this room was constructed out of the Hindu Undivided Family Funds or fell to his share in an oral family settlement. I find no error in the impugned judgments as would raise substantial questions of law sufficient to invoke the jurisdiction of this Court in second appeal. The submission made by counsel for the appellant that the courts below have failed to consider the depositions of DW2 and DW3 about the family settlement, the use of Hindu Undivided Family funds for constructing the room etc. is factually incorrect. A perusal of the impugned judgments discloses that both the trial court and the first appellate court have considered the depositions of DW2 and DW3 and rejected them. As the findings of fact returned by the courts below do not suffer from any error and as no question of law much less a substantial question of law arises for consideration, the appeal is dismissed.

July 07, 2009
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(RAJIVE BHALLA)
JUDGE