

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

CSA No. 5/2012
CMP No. 7/2012

Date of Decision: 25.04.2012

<i>Parmanand</i>	<i>Vs.</i>	<i>Geeta Devi</i>
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CORAM:

MR. JUSTICE J. P. SINGH, JUDGE.

Appearing Counsel:

For Appellant(s) : Mr. M.L.Gupta, Advocate.

For Respondent(s) : Mr. Amrish Kapoor, Advocate.

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| i) | Whether approved for reporting
in Press/Media | : | Yes/No |
| ii) | Whether to be reported
in Digest/Journal | : | Yes/No |
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Judgment

The appellant-Parmanand filed a Suit for possession of land measuring 4 marlas with a room measuring 12` x 15` constructed thereon, comprised in Khasra No.1184 situated at Daily Excelsior Road, Old Janipur, Jammu against the respondent-Geeta Devi saying that he had purchased occupancy rights in land measuring 18 marlas comprised in Khasra No.1184 from Majid Ahmad son of Ghulam Hussan paying him Rs.81,000/- therefor. An Agreement dated 10.4.1998 was executed between him and Majid Ahmed which was attested by a Notary. He sold 14 marlas therefrom to one Narinder Kumar and rest of the land comprising four marlas over which a room measuring 12` x 15` stood constructed, was agreed to be sold to the respondent for Rs.25,000/-. An Agreement to this effect was executed between his brother and the respondent on 08.12.2004. In

terms of the Agreement a sum of Rs.10,000/- was paid to his brother- Kasturi Lal and rest of the amount was to be paid to him within a period of three months by the respondent. According to the appellant, Rs.15,000/- having not been paid to him by the respondent, the already paid amount stood forfeited. The respondent is stated to have later dispossessed the appellant taking forcible possession of the land.

Taking note of the pleadings of the parties, the trial Court of Subordinate Judge, Jammu framed three preliminary issues, which read thus:-

- “(i) Whether the suit is barred by limitation?
-OPD
- (ii) Whether the suit has not been properly valued and thus not maintainable?
-OPD
- (iii) Whether the plaintiff has no cause of action being not owner of the suit property?
-OPD”

After hearing the parties and perusing the documents placed on records, the trial Court came to the conclusion that the land in question was State Land and the Agreement on the basis whereof the Suit was filed pertained to land comprised in Khasra No.1183 min and not 1184 which was claimed to have been purchased by the appellant. Finding that the Agreement relied upon by the plaintiff was executed by one Kasturi Lal and not the Appellant's brother, the appellant's Suit was found non-maintainable based on no cause of action.

In view of the findings of the trial Court on Issue Nos. 2 and 3 against the plaintiff, the appellant's Suit was dismissed.

Upholding the findings of fact recorded by the trial Court that the Agreement to Sell pertained to the land different from the one stated owned by the appellant and that

the Agreement relied upon by the appellant was executed by Kasturi Lal and not by the appellant's brother, the judgment of the trial Court was affirmed by the Ist Appellate Court additionally holding that the Agreement relied upon by the appellant having not been registered, no right in the land would vest in the appellant, in that, conveyance of any immovable property was permissible only by a registered instrument and not otherwise.

The appellant has filed this Civil Second Appeal questioning the dismissal of his Suit.

Though, conceding that the land in dispute was State land, the appellant's learned counsel would submit that the two Courts had erred in dismissing the appellant's Suit ignoring that the appellant could maintain the Suit on the basis of his possessory title which, in law, was good title except against the real owner.

I have considered the appellant's learned counsel's submissions but do not find any merit therein, in that, the appellant had based his Suit pleading him to be the owner of the property on the basis of the Agreement to Sell and not on the basis of his possession. The property in question was admittedly State Land and in this view of the matter, no rights therein would vest in the appellant in the absence of its conveyance to him by the State Government.

Thus, having failed to prove him the owner of the land, the appellant's Suit was rightly dismissed by the two Courts.

Even otherwise, the appellant's Suit was liable to be dismissed when it was found as a matter of fact that the Agreement on the basis whereof the appellant had claimed

rights in the land, pertained to land comprised in khasra No.1183 min and not khasra No.1184, as claimed by the appellant in the Suit. Not only this, the appellant's plea that the Agreement was executed by his brother with the respondent too was found factually incorrect, in that the agreement was found by the two Courts to have been executed by one Kasturi Lal and not the appellant's brother.

In view of the concurrent findings of fact recorded by the two Courts that there was no Agreement between the appellant or his brother and the defendant and the land in question was not comprised in Khasra No.1184, as claimed by the appellant, there is no scope for interference with the impugned Decree in the Civil Second Appeal which even otherwise would lie only if there was a substantial question of law involved therein.

Neither any substantial question of law has been projected in the Memo of Appeal nor does any such question arise from what has been pleaded by the appellant and argued by his learned counsel.

No case for admission of the Civil Second Appeal is, therefore, made out.

This Appeal is, accordingly, dismissed.

(J. P. Singh)
Judge

JAMMU
25.04.2012
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