

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 5772 of 2013 (O&M)

Date of decision: 28.04.2015

Lakhbir Singh

... Petitioner

versus

Kartar Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Manjit Saini, Advocate for
Mr. Sudeep Mahajan, Advocate for the petitioner.
Mr. M.K. Dogra, Advocate for the respondent.

K.Kannan, J.

The plaintiff's suit which was for injunction was set on a plea that the property had been conveyed to the petitioner-plaintiff by Gurcharan Kaur under two transactions dated 15.11.1981 and 10.11.1982. The defendant was setting up a plea that Gurcharan Kaur had granted the property under lease to the defendant in the year 1981 prior to the alleged transactions of sale and that he has no possession. The dispute seems to be with reference to the land within an extent of 3 kanals 18 marlas. The plaintiff side has been closed and after the defendant concluded the evidence, the plaintiff sought for production of evidence by citing Gurcharan Kaur as a witness to a disputed lease set up by the defendant. The Court declined it on the ground that the suit was for injunction and the plaintiff had to discharge the onus of proof to establish his possession. If he had given his evidence, he must have also given the evidence of Gurcharan Kaur in the affirmative regarding his plea of possession and he cannot be permitted to examine Gurcharan Kaur by way of rebuttal evidence.

It is a very narrow approach to the suit in assuming that in a suit for injunction, if the plaintiff sets up a case of sale from a particular

person as proof of possession, the Court will not look into any other document and look only to the plaintiff to establish the same. As regards the contention of the plaintiff's purchase under sale, it is fair enough that the burden was only on the plaintiff and the validity of the sale or the possession claimed by him under the sale could have been established only in the affirmative by the plaintiff. If in an action for injunction, the defendant takes a contention that he is previously in possession of the property under an alleged lease to assert his own claim regarding the possession, the Court, even if does not frame the specific issue must consider whether the defendant's claim to possession under the lease was true or not. In the ultimate bargain it is the sifting of evidence of both the parties that will lead to a proper legal appraisal of who is in possession. The burden of proving the possession shall always be therefore on the plaintiff but the manner of how the burden is discharged is through the respective contentions of parties. If the plaintiff seeks to prove his possession under a sale, he takes upon himself a burden of proving the possession under the sale. If the defendant wants to dispute the contention and offers the evidence that notwithstanding the sale, he was in possession of the property earlier under a lease from the plaintiff's vendor and continues to be so, he is attempting to disapprove the plaintiff's possession and show that he is in possession by virtue of such lease. The weight of the defendant's evidence on what he is asserting would surely place the onus only on the defendant on what is contention is. In light of the provisions of Evidence Act which details the principles of burden of proof in a suit or pleadings, burden lies on the person who would fail if no evidence at all were given on either side. If the plaintiff was therefore seeking for an injunction and if no evidence had been given at all by him he would fail and therefore the fact that he is making an assertion of possession would cast the burden on the plaintiff. Section 103 of Evidence Act refers to burden of proof as to existence of particular fact lies on that person who wishes the Court to believe in its existence. If the

defendant was therefore stating that he is possession of the property under lease, he would require to prove that such a lease existed and that he is in possession under such a lease. If the onus was therefore on the defendant to establish the lease, there is surely an occasion for the plaintiff to rebut such an evidence in rebuttal. That is precisely what the plaintiff is trying to do. The Court ought to have accepted the plaintiffs prayer and allowed for the witness Gurcharan Kaur to be examined on the side of the plaintiff. The problem comes in the manner of inadequacy of evidence only because Courts do not frame appropriate issues on the basis of pleadings. A short cut approach many a time is that when the suit is for injunction and the issue is whether the plaintiff is entitled to injunction is, places the proof of burden on the plaintiff. If the Court examines the respective pleadings of both the parties and frames the issues correctly, the problem of what we are confronting now would not arrive.

The order passed is erroneous and it is set aside. The civil revision is allowed and the plaintiff is given liberty to examine the witness in the manner sought for.

28.04.2015
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(K.KANNAN)
JUDGE