

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Regular Second Appeal No.521 of 2012 (O&M)

Date of Decision: February 12, 2015.

Bhura Singh

.....APPELLANT(s).

VERSUS

Sukhpal Singh alias Paali

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Aman Dhir, Advocate
for the appellant (s).

Mr. K.B.S. Mann, Advocate
for the respondent.

SURINDER GUPTA, J.

Appellant-plaintiff Bhura Singh filed suit for permanent injunction to restrain the respondent-defendant from interfering in his possession over the plot shown as ABCD in the site plan attached with the plaint and fully described in the head note of the plaint and also from dispossessing him in a forcible manner.

It was alleged that the plaintiff had got installed water connection in his name in this plot and paying the water bill regularly. The respondent-defendant, without having any concern whatsoever with this plot, was threatening to interfere in his possession.

Respondent-defendant contested the claim of appellant-plaintiff in the written statement inter-alia pleading that the disputed plot had come to his share in family settlement. Thereafter, the respondent-defendant also partitioned the property with his sister Gejo Kaur. The respondent-defendant and his sister Gejo Kaur are owners in possession of the suit property. Father

of respondent-defendant namely Mithan Singh was brother of plaintiff and he

died long ago. After his death, mother of defendant started living with the appellant-plaintiff as his wife. Mithan Singh had two houses in the village, in one house appellant-plaintiff is living with his family. The disputed house is known as *Sathwala* house. In the settlement that took place in June, 1993, the appellant-plaintiff retained the village house and this *Sathwala* house was given to the respondent-defendant. Affidavit to this effect was also executed. Thereafter, the respondent-defendant partitioned the disputed house with his sister Gejo Kaur on 13.06.2005 under which part of the plot having shed was given to Gejo Kaur and remaining vacant part of the plot remained with the respondent-defendant.

The suit was dismissed by Civil Judge (Junior Division), Gidderbaha with the observations in para 10 of the judgments as follows:-

“10. From the perusal of the file it transpires that PW4 Bhura Singh plaintiff himself during his cross-examination has admitted that the disputed property is also called as Sathwala Makan and that the name of the mother of the defendant is surjit Kaur who after the death of father of the defendant namely Mithan Singh started residing with the plaintiff as his wife and he has further admitted that he and his wife Surjit Kaur are residing in the house situated in the village. Further from the perusal of copy of affidavit proved on record as Ex.DW4/B it is evident that vide the aforesaid affidavit Bhura singh plaintiff has categorically admitted that his brother Mithan Singh has expired and he has given outer house i.e. Sathwala house to the defendant. In view of the said admission of the plaintiff himself by way of Ex.DW4/B this Court is of the opinion that it is not proved on record that the plaintiff is in possession of the suit property.”

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Not satisfied, the appellant-plaintiff filed appeal which was also dismissed by the Additional District Judge, Amritsar.

I have heard learned counsel for the parties and have perused the paper book, pleadings and evidence recorded by the lower Court (copies of which have been made available by learned counsel for the appellant).

While appearing as PW4, appellant-plaintiff had specifically admitted the possession of respondent-defendant over the disputed plot. Though he has tried to make out that this possession was taken after getting him arrested by the police but no such evidence has come on record. PW2 Neel Singh had admitted that Mithan Singh was having two houses. One house was situated in the village and other is known as *Sathwala* house, which is property in dispute. He has further admitted that Bhura Singh is residing in the house inside the village.

Though the appellant-plaintiff is claiming his possession over the disputed house but he has not come up with any plea regarding two houses owned by Mithan Singh. The respondent-defendant had also placed on record, copy of the affidavit dated 2206.1993 given by the appellant-plaintiff wherein he has specifically admitted that Sukhpal Singh has been given *Sathwala* house.

The above evidence clearly indicates that the disputed house/plot is not in possession of the appellant-plaintiff. Both the Courts have looked into the evidence on record and have committed no error of law and fact while reaching the conclusion that the appellant-plaintiff has not been able to prove his possession over the suit property and is not entitled to the relief of injunction as prayed for.

No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

February 12, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE