

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

**RSA No.580 of 2012
Date of Decision:22.01.2015**

Kapil Dev

....appellant

Versus

Inder Singh Maan

.....respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.C.M.Munjhal, Advocate
for the appellant

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was decreed by the trial Court vide judgment and decree dated 13.01.2011. Appeal preferred against the said decree failed and was dismissed on 22.09.2011. This is how, defendant is before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiff, he prayed for a decree for injunction restraining the defendant from causing any interference in his peaceful possession over a plot measuring 13 marlas-3 sarsai i.e.120/7686th part of total land measuring 42 kanals 14 marlas, comprised in khasra No.56/11/2 (1-2), 20(8-0) 21(8-0), 64/5/1/(1-9) 5/2(6-16) 6(2-7) 7(8-0), 65/1(8-0), situated outside the

municipal limits of Panipat. It was averred that the plaintiff had purchased the suit land pursuant to a sale deed dated 18.04.2002. And he raised a boundary wall around the said site, constructed one room and also obtained a water connection. It was maintained that the plaintiff was using the site in question for sowing vegetables. Defendant was known to the plaintiff, since plaintiff had purchased a residential property from the defendant vide sale deed dated 21.01.2003. However, on 05.11.2004, defendant with his aides tried to forcibly dispossess the plaintiff from the suit property. Thus, the suit.

In defence, it was pleaded, inter alia, that the plaintiff had sold the suit land to the defendant vide an agreement dated 21.01.2003, on receipt of full and final sale consideration. And the original sale deed that was in the name of the plaintiff was in possession of the defendant. However, sale deed could not be executed in favour of the defendant as during those days, on account of orders issued by the government, registration of the sale deeds was prohibited. However, it was admitted that the plaintiff had raised a boundary wall around his plot and he had even constructed a room. Besides that he had also obtained a water connection.

Trial Court, on a consideration of the matter in issue and the evidence on record, found that the case set out by the defendant was that plaintiff had sold the suit property to him pursuant to an agreement to sell dated 21.01.2003 (Ex.DW1/2) and had received the total sale consideration. Pritam Singh-DW1, an attesting witness of the agreement in question deposed as regards the

execution of the agreement to sell. And similarly Shamsheer Malik, handwriting expert-DW2, also proved that the agreement to sell dated 21.01.2003 bears the signatures of the plaintiff Inder Singh. Thus, execution of the agreement to sell dated 21.01.2003, was proved by the defendant. As observed, the question to be determined was, as to who was in possession of the suit property. Concededly, no sale deed was executed in favour of the defendant pursuant to the agreement in question, though, more than 7 years had elapsed. Although, there was a recital in the agreement dated 21.01.2003, regarding delivery of possession by the plaintiff to the defendant, but nothing was brought on record to corroborate the said position. So much so, the defendant in his affidavit (Ex.DW3/A), did not claim to be in possession of the suit property. Rather, he admitted that plaintiff had raised a boundary wall around the site in question and had even constructed a room over the suit property. And obtained a water connection. Further, as the sale deed of the suit land was still in the name of the plaintiff, it was observed that the presumption was always that possession of the site was with its owner. No evidence was led by the defendant to prove that he was in actual, physical possession of the suit property. That being so, it was concluded that the plaintiff was certainly entitled to a decree for injunction and defendant was restrained from causing any interference in his possession, except in due course of law. Accordingly, the suit was decreed.

Being dis-satisfied with the decree, defendant preferred an appeal. First appellate Court, reviewed the matter in issue,

evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial Court and the findings recorded in support thereof. Accordingly, the appeal was dismissed.

I have heard learned counsel for the appellant and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Needless to assert, for plaintiff to be entitled to a decree for injunction, he was required to show that he indeed was in actual physical possession of the suit property. Concededly, the plaintiff is the owner of the suit property pursuant to a sale deed dated 18.04.2002. Defendant claimed to be in possession of the site in question pursuant to an agreement to sell dated 21.01.2003 and the recitals thereof do suggest that the possession of the suit property was delivered by the plaintiff to the defendant. However, no evidence, least cogent was brought on record to prove that the defendant was indeed put in actual physical possession of the suit property. So much so, defendant never claimed himself to be in possession of the suit land in the written statement filed by him. Not just that, even in his affidavit (Ex.DW3/A), he did not claim to be in

possession of the suit property. Therefore, a mere recital in the agreement, in the absence of any cogent and corroborative evidence, was hardly of any consequence to hold defendant to be in possession. In fact, he admitted in the written statement that the plaintiff had raised a boundary wall around the site in question and had even constructed a room and obtained a water connection. As observed by the first appellate Court, in the agreement in question dated 21.01.2003, there was no reference to any boundary wall, construction of a room or of a water connection. Thus, it was rightly concluded by both the Courts below that had the possession actually been delivered to the defendant, then certainly, there would have been a recital in this regard in the agreement.

Learned counsel for the appellant could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out, there hardly exists any ground, least plausible in law to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

22.01.2015

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(ARUN PALLI)
JUDGE