

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1567 of 2013 (O&M)

Date of Decision.24.08.2015

Iqbal Singh

.....Appellant

Versus

Ajmer Singh

.....Respondent

Present: Mr. Jasbir Rattan, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. The suit was filed for injunction on the basis of sale deed said to have been executed in the name of the plaintiff represented through power of attorney, father. The father examined himself and relied on sale deed executed in his son's favour in the year 2000 and it made reference to the vendor as being the owner as per the jamabandi for the year 1995-96. The defendant's contention was that the property never belonged to the plaintiff's vendor Gurcharan Singh but it was the property owned and possessed by Bhagwan Kaur wife of Bishan Singh and ever since the date of purchase, the defendant has obtained a mutation in his name and he is in possession of the property. He filed the mutation entries in his name in support of his plea. The plaintiff's case of injunction was found to be not true and the Court below also observed that the principal, namely, the plaintiff himself had not been examined and drew an adverse inference. I find an error on the part of the Court

to draw an adverse inference in a particular situation where the son was living away at Canada and the father was actually speaking on the facts that he actually knew. The only question should have been, therefore, whether the plaintiff could sue for injunction for alleged threat to dispossession by proof of his possession. It is a case where the defendant was trying to contend that he was the owner of the property and was setting up title through yet another person. If two persons claimed title through independent sources and the plaintiff seeks for injunction against yet another person, it became essential for the plaintiff to prove not merely his possession but also his title. I find that no attempt has been made by the plaintiff to show as to how the plaintiff's vendor had right to the property and how his so-called possession was handed over to him.

2. Against the dismissal of both Courts, the plaintiff is in second appeal. The counsel for the appellant wants to argue that there was no issue regarding the title and the suit itself was filed for relief of injunction. In suit for injunction when the defence is by person who sets up right to title and the plaintiff would seek for a relief of injunction only, he must be able to prove that has got better title than the defendant. If the plaintiff took upon himself no such burden and would restrict only to an attempt to prove his possession, the protection against dispossession could be granted by invoking the principle of Section 110 of the Evidence Act that possession being 9-points in law would be taken to be in possession under lawful title and the person who is having such title must prove that he had any better title. In this case,

I would find that the defendant has specifically denied the possession of

the plaintiff and stated in his chief examination that he alone is in possession of the property and would rely on the entries in mutation. In the cross-examination also, there is nothing elicited to discredit his version. The counsel would, however, make an attempt reading through the deposition of the defendant in the cross-examination purporting to contain an admission. I have seen through the copy of the statement produced in Court. It states as follows:-

“.....It is correct that the case filed Iqbal Singh is regarding land measuring 6 bighas 5 biaswas (sic). It is correct that land measuring 6 bighas 5 biswas adjoins to the passage of Rajomajra. It is incorrect that the plaintiff is in possession of land measuring 6 bighas 5 biswas.”

Therefore, there was clear denial of the suggestion that the property was in possession of the plaintiff. Elsewhere in the same deposition, he had to qualify what was the property in the possession of the plaintiff. He has stated as under:-

“....The land which is in possession of the plaintiff, a passage measuring 50 karam towards eastern side is in existence and towards Western side about 50 karam property of Nazar Singh adjoins. State himself that the property of Iqbal Singh is in existence towards my side.” (sic)

3. This I cannot understand as constituting any admission of the plaintiff's possession over the property. I do not find any error in the judgments passed by the two Courts below for interference in the second appeal. The plaintiff, if he is so advised, may institute a suit on the basis of his title and seek for appropriate reliefs. If such a suit were to

be filed, the fact of dismissal of the present suit will not come in the way, for, there is no adjudication regarding the title. There is no substantial question of law involved in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

August 24, 2015
Pankaj*