

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

Regular Second Appeal No.1849 of 2013 (O&M)
Date of decision: 24.08.2015

Pritam Singh

... Appellant

versus

Ramesh Kumar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Prem Singh Bhangu, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J.

CM No.4897-C of 2013

Exemption granted, as sought for.

Application stands disposed of.

Regular Second Appeal No.1849 of 2013

1. The plaintiffs, who filed a suit for mandatory injunction directing the defendant and their agent to remove the construction from the property in Khasra No.903 (0-2 marlas) marked as A, B, C, D in the plan, should be removed and for a permanent injunction restraining any further construction to be made thereon. The

defendants 1 and 2 were the persons, who were putting up construction and the Nagar Council respectively. The plaintiffs were 3 in number i.e. Pritam Singh, Dayal Chand and Banarsi Dass. Pritam Singh's father was Teja Singh, who was reported to be no more. Dayal Chand is son of Tulsi Ram, who is also no more. All the three persons were said to be in possession of the property that belonged to Dera Bassi Nagar Council. It would appear that Dera Bassi Nagar Council filed petitions for ejectment but the petitions were dismissed holding that the petitioners were not in unauthorized occupation. The suit for mandatory injunction is made on the basis of possessory right over the property.

2. The contest was confined only with reference to one of items and particularly also the right claimed by the first plaintiff with reference to the property in No.903. Even the appeal is brought only at the instance of Pritam Singh, who was the first plaintiff. The suit was partly decreed, allowing for the reliefs of mandatory injunction for the 3rd plaintiff and dismissing the suit filed by the plaintiffs 1 and 2. Consequently, two sets of appeals had been filed, one at the instance of the defendant-Ramesh Kumar and another at the instance of the plaintiffs 1 and 2. They were disposed of by a common judgment holding that the appeal filed by the defendant was bound to be allowed and the appeal filed by the plaintiffs was bound to be dismissed. In so doing, the court was addressing the

issue of whether the first plaintiff could rightfully take action for mandatory injunction with reference to property in Khasra No.903.

The court found that such an action is not possible.

3. In this case, the whole contest is on a plea made by the first plaintiff. The first plaintiff's father Tara Chand had executed a power of attorney in favour of one Dayal Chand son of Sadhu Ram and he, in turn, had sold the property on 18.04.1995 in favour of the defendant. The defendant, therefore, claimed the property as his son and Tara Chand having lost the property cannot leave behind any property for the plaintiff to claim. This became crucial, for, the plaintiff was claiming right to the property on the basis of a Will said to have been executed by Tara Chand in his favour. The trial Court had found that the Will had not been proved and even the original had not been produced. Before the appellate Court, the first plaintiff sought to prove that there was a judgment between the parties which had gone upto the High Court where the Will of Tara Chand in favour of Pritam Singh was taken as having been established. The court found that the plaintiff was entitled to claim a property left behind by Tara Chand but since the defence was that there had been a sale by Tara Chand through a power of attorney in the year 1995 itself, the issue was the plaintiff could claim any right in respect of the said property. The defendant had produced only a registration copy of the power of attorney and the plaintiff

contended that since the original had not been filed and there was no proper evidence given as the justification for production of secondary evidence, the document cannot be relied upon and consequently, even a transaction of sale by the power of attorney in favour of the defendant could not create any right.

4. The court, while examining the issue of validity of power of attorney, observed that the power of attorney was registered and a document, which is duly registered or authenticated before Notary Public, could be relied upon and since the power of attorney Dayal Chand himself was examined as DW2, who had spoken about the power executed by Tara Chand and his own sale, that evidence must be taken as proving the sale in favour of the defendant. The court also raised a question if the plaintiffs were filing a suit for mandatory injunction on the basis of possessory right, then the relief of mere mandatory injunction was not sufficient. There should have been a prayer for recovery of possession. The court, therefore, dismissed the contention raised on behalf of the first plaintiff and upheld the claim of the defendant. The first plaintiff, who has lost at the appellate court as well as in the trial court, is the second appellant before this court. The counsel would argue making reference to the judgment of this court that if there is a prayer for mandatory injunction, it should be taken as containing an inherent prayer for recovery of possession and

separate prayer for recovery of possession was not sufficient. The judgment was **Balwant Singh Versus Charan Singh and others-2012(4) Civil Court Cases 0668**. I have no difficulty in accepting the contention that if there is a prayer for mandatory injunction, it would take care of the plaintiff's right to claim recovery as well. However, in this case, the suit was not dismissed for the first plaintiff only because the suit was incompetent. It was only stated as one of the grounds. Assuming for the argument sake that the plaintiff's suit was competent in the manner framed through his action for mandatory injunction without a prayer for recovery of possession, I would hold that the lower appellate court has properly considered the objection taken by the first defendant. He was contending for the position that the first plaintiff's predecessor Tara Chand had actually constituted one Dayal Chand as the power of attorney and the property had also been sold to the defendant. Consequently, the defence was by a person who was claiming as an owner of the property and, therefore, the petitioner cannot claim any right over the property. The appellate court was, therefore, holding that if the plaintiff was merely suing on the basis of his possessory right, the suit should have been under Section 6 of the Specific Relief Act or he could have sought for the relief of recovery of possession. In this case, the plaintiff, who sues for recovery of possession, was not making out a case of his previous possession as

having been breached and that he was entitled to recover of possession of the property. His contention was that the defendant was putting up a construction over the property of which he was in possession without any legal right. In this case, if the defendant was able to establish that whatever right which the plaintiff's predecessor had, such as a possessory right had been transferred in favour of the first defendant, then the plaintiff cannot be said to be entitled to seek for a restraint against the defendant. The right of the defendant will be not merely to any proprietary interest but will also enure as far as the possessory right is concerned. This becomes essential to observe that for all the parties agreed that the property did not belong to the plaintiffs or the predecessor but it belonged to Dera Bassi. If it was a property that was held in ownership by Dera Bassi Nagar Council and the first plaintiff Tara Chand had possession of the property in Khasra No.902, that right of possession having been transferred through a registered document, the plaintiff could not have sought for mandatory injunction for removal of any construction put up by the defendant in the property which was allowed to be transferred in favour of the defendant. I will not, therefore, find any particular mistake about the lower appellate court in finding that the first defendant's act of possession or his construction could be complained of by the first plaintiff. As far as the first plaintiff is concerned, he had no right to the property since he was claiming

through his father. If the father himself had transferred the right which he held in favour of the defendant, there was nothing further for him to make a claim for mandatory injunction. The decision of the appellate court was perfectly justified and there is no merit in the second appeal. There is no substantial question of law which is involved in the second appeal and it is dismissed.

(K.KANNAN)
JUDGE

24.08.2015
sanjeev