

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

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Regular Second Appeal No.3125 of 2013 (O&M)

Date of Decision: October 08, 2015

Dharam Singh

...Appellant

Versus

Harpal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Harsh Aggarwal, Advocate
for the appellant.

Mr. V.K. Sandhir, Advocate
for the caveator-respondent No.1.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Prayer in this appeal is to set aside the judgment and decree passed by the Additional Civil Judge (Senior Division) Tarn Taran, dated 07.01.2012 by which the suit for permanent injunction restraining the defendants from interfering and dispossessing respondent No.1-plaintiff from his exclusive possession as owner of land measuring 4 kanals 18 marlas as detailed in the head note, village Daburji, Tehsil Tarn Taran, District Amritsar, forcibly and illegally, has been decreed, against which the appeal preferred by the appellant-defendant No.1 has been dismissed on 22.03.2013 upholding the judgment and decree passed by the trial Court.

2. It is the contention of the learned counsel for the appellant-defendant No.1 that as per the agreement to sell dated 17.08.2004, which has been entered into between the appellant-defendant No.1 and Mahinder Singh, he is holding the possession of the land, which is prior in time to the sale deed dated 08.10.2004, which is alleged to have been executed by Mahinder Singh etc. in favour of respondent No.1-plaintiff.

He contends that since as per the agreement to sell, he has come in possession of the land, which is prior to the execution of the sale deed dated 08.10.2004, where although a recital has been made with regard to the possession having been handed over to respondent No.1-plaintiff but the respondent No.1-plaintiff has not been able to produce any revenue record to the effect that he is actually in possession of the land, the findings, thus, recorded by the Courts below cannot sustain and consequently the injunction, as prayed for, deserve rejection. His further contention is that since respondent No.1-plaintiff has already filed a suit for specific performance qua the remaining land, which is over and above 4 kanals and 18 marlas, for which sale deed has been executed on 08.10.2004, the present suit would not be maintainable as per the provisions contained in Section 41 (h) of the Specific Relief Act, 1963. He accordingly contends that the judgments and decree passed by the Courts below deserve to be set aside.

3. I have considered the submissions made by learned counsel for the appellant-defendant No.1 and with the assistance of counsel for the parties, gone through the judgments passed by the Courts below, which are impugned herein.

4. In my considered view, the assertions as made by learned counsel for the appellant-defendant No.1, cannot be accepted. The document, on which the appellant-defendant No.1 is placing reliance, is an agreement to sell dated 17.08.2004, which does not confer any right, title or interest in respect of the property when compared with the duly executed, proved and registered sale deed dated 08.10.2004 in favour of respondent No.1-plaintiff. The Courts have rightly proceeded to hold that respondent No.1-plaintiff is in possession of the suit property as there is a specific

recital to that effect in the sale deed, which is a registered document and has been duly proved on record.

5. The argument raised by learned counsel for the appellant-defendant No.1 with reference to Section 41 (h) of the Specific Relief Act, 1963, with regard to the maintainability of the present suit, also cannot be sustained as a perusal of this provision envisages a situation where an injunction can be refused where an equally efficacious relief can be obtained by any other usual mode of proceeding by the plaintiff except in the case of breach of trust, which is not the situation here. Respondent No.1-plaintiff had filed a separate suit for specific performance not for the land in dispute in this case but of the remaining land, for which a separate agreement to sell was entered into. Thus, the assertion of the counsel cannot be accepted as this is a suit pertaining to a land which is not a subject matter of dispute in the suit for specific performance preferred by respondent No.1-plaintiff.

6. It may, however, be added here that as per the prayer made in the suit itself, the injunction was claimed to the extent that he should not be forcibly and illegally dispossessed and it goes without saying that the possession shall be protected as per the decree unless any other due process of law entitles his dispossession.

7. In view of the above, the present appeal being devoid of any merit, stands dismissed.

8. In the light of the dismissal of the appeal itself, the application for stay i.e. CM No.8329-C of 2013, stands disposed of as infructuous.

October 08, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**