

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

RSA No.4404 of 2013(O&M)

Date of Decision: August 28, 2015

Lakhbir Singh.

.....Appellant.

Versus

Nazar Singh & Anr.

.....Respondents.

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

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

RITU BAHRI, J.

Plaintiff-appellant has come up in regular second appeal against the concurrent findings of facts returned by the Courts below whereby suit filed by the plaintiff for permanent injunction restraining the defendants from dispossessing him from the suit property was dismissed by the learned Civil Judge (Jr. Divn.), Dhuri vide judgment and decree dated 04.12.2012 and the findings thereof were affirmed by learned District Judge, Sangrur vide judgment and decree dated 10.05.2013.

2. In brief facts of the case are that plaintiff was owner in possession of the suit property situated on the main road, detailed in head note of the plaint, and a boundary wall has also been constructed thereupon. The defendants have no right, title or interest in the suit land, but still they were threatening to dispossess the plaintiff from the suit property forcibly and illegally. Hence the present suit.

3. Upon notice, defendant No.1 appeared and filed written statement taking preliminary objections regarding maintainability of the suit, concealment of material facts and wrong description of the suit property. On merits it was stated that plaintiff was not in possession of the suit property nor he had specified as to on which part, he was in possession. It was further averred that Raghbir Singh, grandfather of the plaintiff purchased some property in the name of plaintiff vide two registered sale deeds. Dalip Kaur, mother of defendant No.1 also purchased some land vide different sale deeds. As such, Raghbir Singh and Dalip Kaur were co-owners in joint possession of the suit property and were in cultivating possession of the same. It was further averred that plaintiff was not in possession of the suit property, therefore, no threat had been given to him. It was further averred that plaintiff had concealed the fact of filing previous suit by him against defendant No.1, which was later on withdrawn.

4. Replication was also filed by the plaintiff-appellant wherein the entire contents of the plaint were reiterated and those of the written statement filed by the defendant No.1 were denied.

5. From the pleadings of the parties, following issues were framed:-

1. *Whether the plaintiff is entitled for permanent injunction as prayed for?OPP.*
2. *Whether suit is not maintainable?OPD.*
3. *Relief.*

6. Before the trial Court, plaintiff himself appeared as PW-1 and tendered his affidavit, Ex.PW1/A. He was cross-examined to some extent and the remaining cross-examination was deferred. Thereafter, he never chose to appear for his further cross-examination. Kashmir Singh,

Draughtsman (PW-2) tendered his affidavit, Ex.PW2/A, along with site plan, Ex.P1. Neither this witness proved ownership of the plaintiff-appellant over the suit property nor the plaintiff himself had produced any document of title in his favour. The testimony of another witness namely Jaswinder Singh (PW-3) was oral and was not supported by any document. On the other hand, defendants-respondents had brought on record certified copy of order dated 14.11.2009 and statement made by the plaintiff on 14.11.2009, vide which, the earlier suit (suit No.245 of 24.05.2006) filed by the plaintiff had been dismissed as withdrawn. The subject matter in that suit was same as that of the present suit. Nazir Singh-defendant No.1 was also one of the contesting defendant in that suit. The present suit was filed by the plaintiff-appellant without disclosing the factum with regard to earlier suit, which had been dismissed as withdrawn. Therefore, he had violated the provision of Order 7 Rule 1 (i) CPC. Keeping in view the above facts and the fact that he had not made himself available for further cross-examination, the suit of the plaintiff was dismissed.

7. On appeal, the lower appellate Court examined the sale deed, Ex.P2, vide which the plaintiff-appellant had purchased the suit land. As per sale deed, Ex.P2, the plaintiff had purchased 22/1452th share out of total land measuring 72 Bighas 12 Biswas and 06 Biswasis, meaning thereby he had purchased 1 Bigha 2 Biswas out of the joint Khewat measuring 72 Bighas 12 Biswas and 6 Biswasis. The plaintiff had purchased undivided interest of a coparcener in a joint property. In the plaint, the plaintiff-appellant did not disclose the date, month and year of aforesaid threat or invasion on the part of the defendants-respondents. There was no evidence to show that the defendants-respondents had made any attempt to dispossess

the plaintiff-appellant from the suit land. The allegations of threat were vague, general and mechanical in nature. Hence, it was held that the plaintiff-appellant has no cause of action to file the suit. Moreover, he had concealed the factum with regard to the earlier suit i.e. civil suit No.245 dated 24.05.2006, which was dismissed as withdrawn vide order dated 14.11.2009 (Ex.D2) passed by the Civil Judge (Junior Division), Dhuri. Cause of action in the previous suit was same and the said suit was filed with respect to the same land of Raghbir Singh. Further, the plaintiff-appellant did not disclose the khasra numbers of the suit land, which he had stated to be in his possession. The appeal of the plaintiff-appellant was dismissed keeping in view that he had concealed the fact that he had filed an earlier suit, which was dismissed as withdrawn on 14.11.2009 (Ex.D2) and had chosen not to appear for his further cross-examination to support his case regarding possession over the suit property.

8. After going through the impugned judgments, this Court is of the view that the concurrent findings of facts recorded by both the Courts below do not require any interference by this Court, as the plaintiff-appellant has failed to prove on record by leading cogent and convincing evidence that he is in exclusive possession over the suit property and the defendants-respondents had threatened to dispossess him from the same illegally and forcibly. No illegality, much less perversity has been found in the impugned judgments, warranting interference by this Court.

9. No substantial question of law arises for consideration. Resultantly, the present appeal stands dismissed.

28.08.2015

ajp

(RITU BAHRI)
JUDGE