

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

**Regular Second Appeal No.2432 of 2015 (O&M)  
Date of decision: September 30, 2015**

**Rajinder Singh**

**.....Appellant**

**Versus**

**Gurmel Singh**

**.....Respondent**

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI**

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Kasturi Lal, Advocate,  
for the appellant.

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**Ritu Bahri, J.**

**CM No.6362-C of 2015**

For the reasons mentioned in the application, same is allowed and  
delay of 220 days in re-filing the appeal is condoned.

**RSA No.2432 of 2015**

Defendant-appellant has come up in regular second appeal against  
the judgments of concurrent findings of facts dated 14.06.2012 and  
20.05.2014 passed by the Civil Judge (Junior Division), Dera Bassi and the  
Additional District Judge, Sahibzada Ajit Singh Nagar (Mohali)  
respectively, whereby suit filed by the plaintiff-respondent for permanent  
injunction restraining the defendant, his agents, servants and representatives  
from interfering in his peaceful possession or dispossessing the plaintiff by

measuring 177 Sq. yards, situated at Shalimar Enclave, Himmatgarh, NAC, Zirakpur, has been decreed.

Gurmel Singh-plaintiff (respondent herein), claimed himself to be owner in possession of disputed residential plot No. A-60, measuring 177 Sq. yards, as detailed in head note of the plaint. He had purchased the said plot vide sale deed dated 09.03.2005 for a sum of Rs.5,30,000/- from Balbir Kumar. Mutation was sanctioned on the basis of the sale deed. Vendor of the plaintiff namely Balbir Kumar, was allotted the said plot by Shalimar Lan Projects Ltd. Vide letter dated 01.09.2002. Sale deed in that regard was executed in favour of Balbir Kumar by previous owner on 11.03.2002 through Arun Kumar Singla, General Power of Attorney of Tejinder Kumar, Chairman of Shalimar Land Projects Limited. Aforesaid Balbir Kumar had taken a loan of Rs.4 lacs from State Bank of India by depositing sale deed dated 11.03.2002 along with allotment letter dated 01.09.2002. As per the sale deed dated 09.03.2005, plaintiff paid Rs.26,500/- through cheque bearing No.646076 dated 09.03.2005 before the Sub Registrar, Dera Bassi. Therefore, the plaintiff is bonafide purchaser of the disputed plot in good faith and for valuable consideration. State Bank of India had also issued a certificate to the effect that nothing was due towards Balbir Kaur and his guarantor Harvinder Pal Singh. As per plaintiff, the defendant, who had got no concern with the dispute plot, was trying to raise construction therein, illegally and forcibly. He requested the defendant not to interfere in his possession, but to no effect.

Upon notice, defendant-appellant filed written statement and raised preliminary objection with regard to maintainability of the suit. It was stated that as per the sale deed produced by the plaintiff, he had purchased

plaintiff, had allegedly purchased plot from Shalimar Land Projects Limited vide sale deed dated 11.03.2002, but the said sale deed did not contain any plot number. Rather it contained two khasra numbers i.e. 81 and 85. Therefore, the plaintiff cannot claim any right over Plot No. A-60. It was further stated that plot No.A-60 was purchased by one Rakesh Kumar from Shalimar Land Project Limited on 20.06.2001 i.e. prior to the sale deed of Balbir Kumar, vendor of the plaintiff. Rakesh Kumar had sold this plot in favour of the defendant vide sale deed dated 25.01.2005, which is prior to the alleged sale deed dated 09.03.2005. Khasra numbers of plot No. A-60 are 80 and 84, whereas Khasra numbers of plot of Balbir Kumar are 81 and 85. It was further stated that the defendant was owner in possession of plot No. A-60 and had already filled foundations and constructed small boundary wall around the said plot. As Balbir Kumar was not owner of 177 Sq. yards of are on 09.03.2005, therefore, he was not competent to sell his plot in favour of the plaintiff. Plaintiff, in connivance with Balbir Kumar wanted to grab the plot of the defendant. Mutation sanctioned on the basis of alleged sale deed was illegal, null and void. Since plot No. A-60 was not sold by Shalimar Land Project Limited, therefore, the question of its allotment to Balbir Kumar could not arise.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is in possession of the suit property? OPP
2. Whether the plaintiff is entitled to permanent injunction? OPP
3. Whether suit is not legally maintainable? OPD
4. Whether the plaintiff has not approached the Court with clean hands? OPD
5. Relief.

In the suit, both the parties have claimed that they were owners in possession of residential plot bearing No. A-60, measuring 177 Sq. yards, situated at Shalimar Enclave Himmatgarh, NAC, Zirakpur. Gurmail Singh-plaintiff had produced sale deed, Ex.P1, which was executed in favour of Balbir Kumar, vendor of plaintiff. Dayal Singh Bajwa (PW-3) had clarified that Balbir Kumar, vendor of the plaintiff, had sold his plot No. A-60, situated in Shalimar Enclave, Himmatgarh, NAC, Zirakpur, vide sale deed dated 09.03.2005. This witness had further stated that since the date of execution and registration of the sale deed in favour of plaintiff, he was owner in possession of the plot in question. Due to typographical mistake, plot number in the sale deed had been mentioned as A-160 instead of A-60. Jagdish Chand Kapoor (PW-4) stated that Gurmel Singh-plaintiff was owner in possession of the plot in question and the said plot had been purchased by the plaintiff from Balbir Kumar. Rajesh Kumar, Field Officer, SBI (PW-6) proved the loan taken by Balbir Kumar, vendor of the plaintiff and his son Harinderpal Singh from SBI Branch, Sector 16, Panchkula. Application submitted by Balbir Kumar to the Bank for taking financial assistance was proved as Ex.PW6/B. In lieu of this financial assistance, Balbir Kumar and his son Harinderpal Singh had submitted the original sale deed as well as original allotment letter dated 01.09.2002, Ex.PW-6/C. Harinder Singh, Director, Shalimar Land Project Ltd. Had given his affidavit, Ex.PW-6/E, in which he had clearly stated that the company had sold plot No. A-60 measuring 28'-3"x56'-3" having total area of 177 Sq. yards, to Balbir Kumar and the actual and physical possession of the said plot was given to the purchaser. Balbir Kumar, vendor of the plaintiff, was examined as PW-7, who had stated that Plot No. A-60 was purchased by him. In this regard,

Ltd. in his favour. He had sold the said plot vide registered sale deed dated 09.03.2005 in favour of Gurmel Singh-plaintiff for a valuable consideration of Rs.5,30,000/-. Since the execution and registration of the sale deed, plaintiff was owner in possession over the said plot. He further clarified that on account of inadvertence and typographical mistake, plot number in the sale deed was mentioned as A-160 instead of A-60. In this regard, he had given his affidavit dated 14.03.2005, in which, it had clearly been mentioned that it was a typographical mistake with regard to number of plot having been sold to Gurmel Singh-plaintiff. The original affidavit of Balbir Kumar was proved as Ex.P17. Bhupinder Sharma (PW-9) had clarified that there was no plot bearing No. A-160 in the entire layout plan and there was only plot No. A-60 in block-A. He had also given the boundaries of plot No. A-60. Evidence led by the plaintiff was sufficient to prove that the plot in dispute had been allotted to Balbir Kumar, vendor of the plaintiff, vide allotment letter, Ex.P16, and as per sale deed, Ex.P2, the plaintiff is owner in possession of the same since 09.03.2005.

Satpal, Halqa Patwari (PW-5), had proved copies of mutations, Ex.PW5/A to Ex.PW5/E. As per these mutations, Balbir Kumar had purchased 66/3200 share in the land vide sale deed dated 27.03.2002. PW-5 further stated that Balbir Kumar had sold land measuring 4 Biswas 9 Biswas and he had remaining land measuring 2 Bighas 8 Biswas, which was sold vide mutation No.2072. Land bearing Khasra No.80 min (2-0) was also recorded in his name.

Rajinder Singh-defendant (DW-1) proved on record copy of sale deed dated 20.06.2001 (Ex.D1), whereby Shalimar Land Projects had sold land measuring 1 Bigha, 17 Biswas, 8 Biswasi (1868.75 Sq. yards) being

0), 84 (6-2) in favour of Rakesh Kumar and seven other persons for a consideration of Rs.18,33,000/-. Vide sale deed dated 25.01.2005 (Ex.D2), Rajinder Singh-defendant had purchased plot No. 60, measuring 3 Biswas 10 Biswasi (175 Sq. yards) being 70/4040 share of above said land measuring 10 Bighas 2 Biswas from Rakesh Kumar for a consideration of Rs.2,45,000/-. Further, vide sale deed dated 16.08.2004 (Ex.D3), Ram Kumar etc. had sold 18/3200 share in land bearing Khasra No.81 (4-0), 85 (4-0) to the extent of 13 Biswas 7 Biswasi in favour of Balbir Kumar, vendor of the plaintiff.

The defendant-appellant did not produce any letter of allotment issued in favour of Rakesh Kumar. The defendant has miserably failed to lead sufficient evidence before the Courts below to show that he is in possession of plot No. A-60, which is the only plot existing in Shalimar Enclave, and he is in possession of the same. Bhola Singh, Mason, (DW-3) has deposed to the effect that he has raised boundary wall around the plot in question. However, in his cross-examination, this witness stated that he had raised boundary wall in Alishan Colony. He did not know whether plaintiff was in possession over the plot in dispute. Sukal Chand (DW-4), in his cross-examination, had admitted that he has personal relations with Rajinder Singh-defendant and he was friend of defendant, as they both belong to Budlada. Jatinder Kumar, Photographer (DW-9), in his cross-examination stated that he had taken the photographs of the plot in dispute in September, 2009 or 2010. He did not know the number of the plot, of which, the photographs were taken.

On the basis of oral as well as documentary evidence, Rajinder Singh-defendant had no concern with the plot in question, whereas plaintiff

situated in Shalimar Enclave, Himmatgarh, NAC, Zirakpur. Case of the defendant was that he had purchased the said plot from Rakesh Kumar vide sale deed dated 25.01.2005, who had purchased the said plot from Shalimar Land Projects Limited vide sale deed dated 20.06.2001 (Ex.D1), wherein the number of the plot was recorded as A-60. However, no allotment letter issued in favour of Rakesh Kumar, vendor of the defendant, was placed on record. Moreover, the boundaries of the plot purchased by the defendant were not recorded in the sale deed, produced by the defendant. Deposition of Shukul Chand (DW-4) was oral, wherein he had orally corroborated the plea of the defendant. He was not resident of the concerned area. During cross-examination, Rajinder Singh (DW-1) had stated that his plot had been forcibly occupied by the plaintiff, but he did not file any suit for recovery of possession. He further stated that he did not as to if, Balbir Kumar owned disputed plot No. A-60 on the basis of allotment letter and now the same is owned by the plaintiff. As per the testimony of DW-3, DW-4 and DW-9, it could not be presumed that defendant-appellant was/is in possession over the disputed plot. Moreover, as per the admission of Rajinder Singh-defendant himself, the plaintiff was in possession of the disputed plot, which he had taken forcibly.

Both the Courts below, after examining the evidence in detail, have returned a finding that the plaintiff-respondent had purchased the plot in question from Balbir Kumar, who had been originally allotted this plot by Shalimar Enclave, Zirakpur. The loan taken by Balbir Kumar from State Bank of India for purchasing the said plot and subsequent clearance of loan by him was sufficient to prove that he (Balbir Kumar) was owner of plot No. A-60, on which his possession was not disputed by the defendant. The

possession of the plot in question pursuant to the sale deed dated 09.03.2005 executed in his favour by Balbir Kumar, original owner.

Accordingly, after going through the impugned judgments passed by the Courts below, this Court is of the view that the suit has been rightly decreed in favour of the plaintiff-respondent and no illegality, much less perversity, has been found therein, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

**September 30, 2015**  
ajp

**(RITU BAHRI)**  
**JUDGE**