

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

Regular Second Appeal No.108 of 2014 (O&M)
Date of decision: 17.08.2015

Dinesh

... Appellant

versus

Mahender Singh alias Dhol and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Amit Kumar Goyal, Advocate,
for the appellant.

K.Kannan, J. (Oral)

1. The suit for injunction was filed by the plaintiff stating that the property had been purchased by his father-3rd defendant. The defendants 1 and 2, who had no right to the property, were alleged to be creating trouble for the plaintiff's peaceful enjoyment. The plaintiff's contention was that there had been a house put up on the property purchased and that the property was also assessed to property tax.

2. Defendants 1 and 2 entered a contest and contended that even the property had been gifted to Saini Society and it was actually in the possession of the Society. The defendants also pointed out to the fact that the village records showed that the property had been assessed in the Municipal Council of Sonapat referring to the property as being assessed in the name of 3rd

defendant for an extent of 97 square yards. The sale deed referred to an extent of 140 square yards. The trial Court found that in the rough sketch filed by the plaintiff, no linear measurement had been given and no extent of property had been given. The boundaries mentioned in the rough plan itself seemed suspicious and wrong and the site plan contradicted the recitals found in the sale deed (Ex.P2). The court also observed that if the 3rd defendant was stated to be occupying the property at the time of filing the suit, no reason was given as to why he was cited as a defendant and the suit was filed by the plaintiff. The court observed that the fact of death of 3rd defendant during pendency will not have any impact to benefit the plaintiff, for, it was not clearly brought out who were all the legal heirs.

3. The suit was dismissed and the appeal was also dismissed. The appellant's contention that the defendants 1 and 2 who filed the written statement and filed the document would not give any evidence and the suit had been dismissed relying on the defendant's exhibits. According to him the fact that the defendants did not prove the defence ought to have been taken as a factor in favour of the plaintiff. I reject such an argument, for, it is a fundamental precept that the plaintiff, who sues for injunction, shall prove his own case irrespective of whether the defendant has a valid defence or not. If the plaintiff cannot succeed on his strength, he

cannot pick holes on what the defendant failed to prove. The courts below were justified in their observations that the site plan was defective in material particulars of what it was bound to state, namely, the measurements and boundaries that ought to be reconcilable to the document of purchase which was taken to be the basis for the plaintiff's claim for injunction. With the discrepancies coming in the way and the failure to prove the possession through documents, which ought to have been available especially when the property was situate within the Municipal Council and assessed to tax, the court was fully justified in rejecting the plaintiff's case as not established and I will find no error for intervention.

4. The suit had been only for a relief for injunction and the plaintiff will not be barred from maintaining any action on the basis of title brought through the document of the year 1966. If all the legal heirs of the purchaser are brought on record and an adjudication is sought against the person who denies the plaintiff's legal character as owners of the property, it will be perfectly competent to do so, notwithstanding the dismissal of the present suit and appeals. With such liberty, the decisions already rendered are confirmed and the second appeal is dismissed.

(K.KANNAN)
JUDGE

17.08.2015
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