

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

RSA No.3916 of 2015 (O&M)

Date of decision: 18.08.2015

Banwari Lal

....Appellant

Versus

Dayala Ram

....Respondents

CORAM: HON'BLE MR. JUSTICE K.C. PURI.

Present: Mr. P.K. Ganga, Advocate
for the appellant.

K.C. PURI J. (Oral)

This regular second appeal has been directed by defendant-appellant against the judgment and decree dated 28.07.2015 passed by Sh. R.K. Mehta, Additional District Judge, Sirsa, vide which the appeal preferred by the defendant-appellant against the judgment and decree dated 12.08.2014 passed by Sh. Devender Singh, Civil Judge Junior Division, Mandi Dabwali, was dismissed.

Briefly stated, Dayala Ram-plaintiff filed suit for permanent injunction against Banwari Lal-defendant in respect of land measuring 2 kanal 8 marlas comprising in Khewat No.783 Khata No.1332 Rect. No.257 Killa No.8/3(2-9). It is pleaded that Sohan Lal was the owner in possession of the land mentioned in the head-note of the plaint. After his death the plaintiff being son of Sohan Lal is owner in possession of the suit property.

Defendants are out to dispossessed the plaintiff by illegal means.
Hence suit for injunction.

The defendant contested the suit by filing written statement pleading therein that Sohan Lal has already sold the land measuring 10 kanals 3 marlas through Sale Deed dated 03.02.1999 as described in the written statement. He has further pleaded that regarding suit property Agreement to Sell dated 15.06.1997 was executed and Sohan Lal has received the consideration in respect of suit property. Defendant is in possession of the suit property and the plea of adverse possession was also taken.

From the pleadings of the parties following issues were framed:-

- 1. Whether the plaintiff is entitled for a decree for permanent injunction restraining the defendant from interfering into the peaceful possession of the plaintiff over the suit land as mentioned in the head note of the plaint and as prayed for? OPP.***
- 2. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD.***
- 3. Whether the suit of the plaintiff is not maintainable in the present form? OPD.***
- 4. Relief.***

In order to prove his case, plaintiff himself appeared into the witness box as PW-1 and on the other hand, defendant himself appeared as DW-1 and also examined Narsi Ram as DW-2, Sharwan Singh as DW-3.

The learned trial Court after appraisal of the evidence

returned the finding on Issue No.1 in favour of plaintiff whereas Issues No.2 and 3 were decided against the defendant and in favour of plaintiff and consequently, the suit of the plaintiff was decreed vide judgment dated 12.08.2014 passed by Sh. Devender Singh, Civil Judge (Junior Division), Mandi Dabwali.

Aggrieved against the judgment and decree dated 12.08.2014 the defendant filed an appeal before the Lower Appellate Court and the said appeal was dismissed by Sh. R.K. Mehta, Additional District Judge, Sirsa, vide judgment and decree dated 28.07.2015.

The appellant-defendant has impugned both the judgments and decrees dated 12.08.2014 and 28.07.2015 in the instant regular second appeal.

The appellant in Para No.9 of the Grounds of Appeal has mentioned that following substantial questions of law have arisen in the present appeal:-

- 1. Whether the impugned judgments and decrees are perverse, erroneous and not sustainable in the eyes of law?***
- 2. Whether the findings having been recorded by the Courts below on misreading and misinterpretation of pleadings and evidence both, involve a substantial question of law or not?***
- 3. Whether the judgments and decrees of the Courts below are required to be set aside and reversed on the account of being perverse and unsustainable in eyes of law and more particularly,***

when it is found that the findings recorded therein are based on perfunctory and superficial approach?

4. Whether the judgments and decrees passed by the Courts below are not self-contradictory having patent and obvious defects therein?

5. Whether judgment and decree passed by the ld. Additional District Judge, Sirsa can be terms as finding of facts or not?

6. Whether the judgments and decree passed by the Ld. Additional Civil Judge (Senior Division) Mandi Dabwali can be reversed on the basis of two different stands taken by the plaintiff/respondent?

7. Whether the Ex.D1 was considered by the Ld. Additional District Judge, Sirsa while affirming the judgment and decree passed by the Ld. Additional Civil Judge (Senior Division) Mandi Dabwali?

8. Whether the fraud has been played with the appellant as the amount has been received of the land in dispute by the father of the respondent/plaintiff and physical possession was handed-over both due to wrong entries in the revenue records the valuable rights of the appellant have been taken away?

9. Whether the document Ex.D4 to Ex.D10 in evidence is not a proof of physical possession?

I have heard the learned counsel for the appellant and have gone through the record of the case.

Learned counsel for the appellant has submitted that judgment of both the Courts below are result of misreading and misinterpreting the evidence on the file. *Nehari Girdawari* i.e.

Ex.D4 to Ex.D10 are in favour of defendant, writing dated 15.06.1997 i.e. Ex.D1 executed by Sohan Lal is also in favour of defendant. The receipt regarding the land revenue are also in favour of the defendant. So, it is submitted that judgment of both the Courts below are perverse and not sustainable in the eyes of law as the same have been passed in a perfunctory manner. So, the prayer has been made for acceptance of the appeal after setting-aside the judgment of both the Courts below.

I have considered the said submission but do not find any force in that submission.

It is a simple suit for permanent injunction. It is not disputed during the course of arguments that Sohan Lal – father of plaintiff is the real owner in possession of the suit property. The case of the plaintiff is that, being natural heirs he is in possession of the suit property whereas the defendant has relied upon the Agreement to Sell.

The Agreement to Sell does not confer any title. Moreover, no reasoning has been given why suit for specific performance in respect of agreement dated 15.06.1997 has not been filed till today.

It is a simple suit for injunction and as such, the possession of the suit property is relevant factor. The reliance of the appellant is on the revenue records coupled with the oral evidence whereas reliance of defendant is upon *Nehari Girdawari*,

agreement and receipt. Both the Courts below after appraisal of the evidence gave a categorical finding that plaintiff is in possession of the suit property and defendant has failed to prove his possession. The evidence of *Nehari Girdawari* has been fully discussed and have been ignored by the Courts below. There is nothing on the file that judgments of both the Courts below are the result of misreading and misinterpreting the evidence on the file. Further, it cannot be said that judgment of both the Courts below are perverse, so I have no hesitation in holding that no substantial question of law has arisen in the present appeal. The question of factum of possession has been answered in favour of plaintiff by both the Courts below and that does not suffer from any infirmity.

Consequently, the appeal is devoid of any merit and the same stands dismissed.

18.08.2015

yakub

(K.C. PURI)
JUDGE