

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.5762 of 2015 (O & M)

Date of Decision: *December 10, 2015*

Murali Singh

..... APPELLANT

VERSUS

Jai Bhagwan

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. Harsh Aggarwal, Advocate, for the appellant.

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Jaspal Singh, J

1. The instant appeal has been preferred by plaintiff – Murali Singh, challenging judgment and decree dated September 11, 2014 passed by the trial court as well as judgment & decree dated July 07, 2015 passed by the lower appellate court whereby the findings recorded by the trial court have been upheld and appeal filed by the plaintiffs against the judgment & decree passed by the trial court has been dismissed. Accordingly, the suit filed by plaintiff for permanent injunction has been dismissed.
2. While assailing the findings returned by the trial court and affirmed by the lower appellate court, it has been ebulliently argued by learned counsel for the appellants that same are against the evidence

available on file and settled canons of law. Courts below have misread and misconstrued the oral as well as documentary evidence adduced by the appellant – plaintiff which has resulted into miscarriage of justice. Infact, it is abundantly clear from the evidence available on file that one Bhupinder Kaur became owner in possession of 1 kanal 5 marlas of land on the basis of decree dated April 01, 1989 passed in a suit filed by her against Ch. Dalel Singh and Smt. Savitri Devi. The respondent, somehow, got an agreement to sell executed by Bhupinder Kaur on July 31, 1995 for sale of 208.4 Square yards depicted on the Mark ‘EFGJAD’ for total consideration of ₹ 3,80,000/- out of total land measuring 1 kanal 5 marlas. Defendant – respondent Jai Bhagwan had filed a civil suit for specific performance against Bhupinder Kaur on the basis of aforesaid alleged agreement to sell dated April 31, 1995 before civil court. The said suit was decreed vide judgment & decree dated November 25, 2003. However, Murali Singh continued his possession by virtue of permissive possession.

3. Learned counsel for the appellant further contends that during the pendency of suit for specific performance filed by the respondent, respondent had started interfering in the land beyond 208.4 square yards as a result of which, Bhupinder Kaur, through her Special Power of Attorney, Parveen Kumar instituted a suit seeking permanent injunction restraining the respondent from interfering in her possession. In the said suit, Bhupinder Kaur had specifically unfolded that only the land measuring 208.4 square yards, was agreed to be sold by her vide agreement to sell dated July 31, 1995. Since, terms & conditions of the agreement to sell were not complied with by respondent – Jai Bhagwan, she sold away the same to Mr. S.S. Soni and a part of the house, Mark ‘ABCD’ as well as Mandir marked as ‘BIHC’

were still owned and possessed by her. Since, respondent – Jai Bhagwan had

desisted from interfering in her possession, she got the suit for permanent injunction dismissed in default on November 21, 2011 but subsequent thereto in the year 2012, Jai Bhagwan again started interfering into peaceful possession of the appellant – plaintiff and thus, appellant was constrained to file a suit for permanent injunction, though, his possession over the suit property has been adverse to the true owner namely Bhupinder Kaur but since he has been in exclusive and established possession of the house in dispute for the last more than 20 years, he is entitled to protect his possession from the defendant as well as its true owner. The appellant – plaintiff has established his possession of the property in suit by adducing oral as well as documentary evidence. He has placed on record electric bills Ex.P5, election identity card Ex.P8 and Ex.P10. On the other hand, respondent – defendant has nothing to do with the property in dispute and he has got no right or interest over the same.

4. Learned trial court as well as lower appellate court did not appreciate the evidence brought on record which establish the possession of the appellant – plaintiff over the suit property which has caused an irreparable loss to him. Thus, impugned judgments & decrees passed by both the courts below being against evidence available on file and settled canons of law are liable to be set aside by way of acceptance of instant appeal and suit of the appellant – plaintiff merits decretal in toto.

5. This Court has given deep thought to the aforesaid submissions made by learned counsel for the appellant – plaintiff but finds the same to be of no substance.

6. Infact, from the pleadings as well as evidence brought on record by the parties, it emerges that plaintiff has adopted a novel device to

November 25, 2003 Ex.P4, in connivance with Bhupinder Kaur. Undoubtedly, Bhupinder Kaur was owner of the property in question, who had acquired its title vide order dated April 1, 1989. Subsequent thereto, she entered into agreement to sell Ex.P2 with Jai Bhagwan, defendant – respondent and when Bhupinder Kaur failed to adhere to the terms & conditions of agreement to sell Ex.P2, respondent – defendant was constrained to knock the doors of civil court by filing a suit for specific performance which was decreed in favour of Jai Bhagwan vide judgment & decree dated November 25, 2003 Ex.P4. It is also undisputed fact that previously Bhupinder Kaur also filed a suit for permanent injunction restraining the defendant – respondent Jai Bhagwan through her Power of Attorney Parveen Kumar seeking injunction against the defendant – respondent from interfering in her possession but the said suit was got dismissed in default. Infact, it is fully established on record that defendant – respondent is owner in possession of the suit property on the basis of judgment Ex.P4/Ex.D7 dated November 25, 2003 as well as decree Ex.D10. It was only thereafter, Bhupinder Kaur got executed the sale deed Ex.P11 in favour of Jai Bhagwan on the basis of which mutation Ex.D13 has already been incorporated and sanctioned. The aforesaid documentary evidence clearly proves defendant Jai Bhagwan to be its real owner in possession on the basis of registered sale deed. The suit filed by appellant – plaintiff appears to have been filed at the instance of aforesaid Bhupinder Kaur, otherwise, he has got no right, title or interest in it. Documents brought on record in the shape of site plan Ex.P1, identity card Ex.P8 or ration card Ex.P9 do not, in any way, pertain to the disputed property. Moreover, the appellant – plaintiff has claimed himself to be owner of the property in question on the basis of adverse possession but he being the plaintiff cannot

claim himself to be owner on the basis of adverse possession and not competent to seek any such injunction because a person claiming ownership on the basis of adverse can only use it as a defence/shield and not as a weapon or sword.

7. Thus, this court is of the considered view that appellant – plaintiff has rightly been non-suited by both the courts below and judgments & decrees under challenge being absolutely in consonance with the evidence available on file and settled principles of law do not call for any interference by this Court. Accordingly, the instant appeal being devoid of merits is dismissed with no order as to costs.

December 10, 2015
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(Jaspal Singh)
Judge