

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

RSA No. 961 of 2015 (O&M)

Date of Decision: 26.3.2015.

Sajjan Singh

..... Appellant

Versus

Pritam Singh

.... Respondent

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

Present: Mr. Jaideep Verma, Advocate,
for the appellant.

K.C. PURI. J.
CM No. 2823-C of 2015

There is delay of 123 days in re-filing the appeal. The same stands condoned on the grounds mentioned in the application.

Main case

The defendant-appellant has directed this regular second appeal against the judgment and decree dated 3.7.2014 passed by Mrs. Amarjot Bhatti, District Judge, Rupnagar vide which the appeal preferred by the present appellant against the judgment and decree dated 28.5.2013 passed by Ms. Sonali Singh, Civil Judge (Junior Division), Ropar as dismissed.

Briefly stated, Pritam Singh filed suit for permanent injunction restraining the defendant from interfering in peaceful use and possession of plaintiff over the suit property situated within the lal lakir of village Gobindpura, Tehsil and District Ropar. The case of the

plaintiff set forth in the plaint is that previously Manmohan Kaur wife of Baldev Singh daughter of Ajit Singh was the owner of the property in dispute and on 27.9.2005 in consideration of Rs.50,000/- Manmohan Kaur delivered the possession of the suit property to the plaintiff and executed agreement in favour of the plaintiff.

The said suit was resisted by the defendant and defendant has pleaded that he has purchased the suit property vide sale deed dated 26.9.2007 from Manmohan Singh son of Ajit Singh son of Basant Singh. Manmohan Singh has inherited the property and he has handed over the possession of the property to the defendant.

In replication, the contents of written statement were denied whereas the stand taken in the plaint was reiterated as correct.

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 the suit is not maintainable in its present form ?OPD
3. Whether the plaintiff has no locus-standi to file the present suit ?OPD
4. Whether the suit is bad for non joinder of necessary parties ?OPD
5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction ?OPD

6. Relief.

In order to prove his case, plaintiff himself stepped into the witness box as PW-1 and also examined Udham Singh as PW-2 and closed the evidence.

The defendant himself stepped into the witness box as as DW-1 and examined Narinder Singh as DW-2, Manmohan Singh as DW-3 and closed his evidence.

Learned trial Court after appreciating the evidence returned finding in favour of the plaintiff to the extent that plaintiff is in possession of the suit property. Issues No.2 to 5 were decided against the defendant and consequently, suit of the plaintiff for permanent injunction was decreed with costs.

Feeling dis-satisfied with the judgment and decree dated 28.5.2013 passed by Ms. Sonali Singh, Civil Judge (Junior Division), Ropar, the defendant preferred regular first appeal. The said appeal was dismissed vide judgment and decree dated 3.7.2014 passed by Mrs. Amarjot Bhatti, District Judge, Rupnagar.

The defendant-appellant aggrieved by both these judgments and decrees dated 28.5.2013 passed by Ms. Sonali Singh, Civil Judge (Junior Division), Ropar and the judgment and decree dated 3.7.2014 passed by Mrs. Amarjot Bhatti, District Judge, Rupnagar, has preferred the present regular second appeal.

The appellant in paragraph No.10 of the grounds of

appeal has mentioned that following substantial questions of law have

arisen:-

- (i) Whether the injunction can be granted against the owner?
- (ii) Whether the plaintiff stands upon his own legs & not liable to take the advantage of others wrong?
- (iii) Whether both the Courts below committed grave error in not considering the facts, evidence & law applicable therein?
- (iv) Whether the finding of the Courts below is contrary to the evidence?

Learned counsel for the appellant has submitted that plaintiff has to prove his case independently. The claim of the plaintiff is based on agreement to sell dated 27.9.2005, said to be executed by Manmohan Kaur daughter of Ajit Singh. Manmohan Kaur was herself not the owner and as such she was unable to execute the agreement in favour of the plaintiff. Manmohan Kaur was also not competent to deliver the possession as she herself was not owner of the property.

Learned counsel for the appellant has further submitted that Basant Singh was owner of property at one time. Said Basant Singh has executed Will in favour of Manmohan Singh and as such Manmohan Singh has executed sale deed in favour of defendant-appellant. The defendant-appellant being owner, no injunction can be granted against the true owner. Both the Courts below have committed grave error in not considering the correct evidence and law applicable.

The findings given by both the Courts below are contrary to the evidence. To support the argument that agreement being unregistered does not confer any title, counsel for the appellant relied upon authorities (i) Gurbachan Singh vs. Raghubir Singh 2010(3) CCC 731 (P&H); (ii) Birham Pal and others vs. Niranjana Singh and another 2011(2) Law Herald 1136; (iii) Rambhau Namdeo Gajre vs. Narayan Bapuji Dhotra (dead) through LRs 2004(4) RCR (Civil) 303; (iv) Avinash Kumar Chauhan vs. Vijay Krishna Mishra 2009(1) RCR (Civil) 615 and; (v) K.B. Saha and sons Private Limited vs. Development Consultant Limited (2008) 8 SCC 564.

I have considered the submissions made by counsel for the appellant and have gone through the record of the case.

The plaintiff has filed simple suit for injunction and it is settled law that in a suit for injunction, title of the parties is not to be seen. Injunction can be granted in favour of the plaintiff in case he is found in established possession of the suit property. There is a definite finding returned by both the Courts below that plaintiff is in possession of the suit property. The said finding cannot be said to be the result of misreading and misinterpreting the evidence on the file. The argument advanced by counsel for the appellant that no injunction can be granted against the true owner cannot be given much importance as the present suit is merely suit for injunction. It is not a suit for declaration or possession. The title in respect of suit property is not to be determined.

Even both the Courts below have given a finding that mere agreement to sell does not confer any title but since this is a mere suit for injunction and as such title has not been determined by both the Courts below.

The authorities Gurbachan Singh, Birham Pal, Rambhau Namdeo Gajre, Avinash Kumar Chauhan, cases (supra) relate to the fact of non-registration of agreement. The point in issue in those authorities was whether a decree for specific performance can be passed in respect of unregistered agreement to sell. There is no such issue in the present case as it is a mere suit for permanent injunction.

Authority K.B.Saha's case (supra) also relates to the fact of non-registration of document required to be registered. There is nothing on the file that both the Courts below have committed error of fact, evidence or law. The findings of both the Courts below are not contrary to the evidence as argued as no specific instance has been given. The plaintiff has been able to prove the possession over the suit property.

So far as the question of possession is concerned, that is a question of fact and both the Courts below have returned a definite finding that plaintiff is in possession of the suit property and as such that finding cannot be re-agitated in the regular second appeal in view of Section 100 of CPC, more so, when there is nothing on the file that judgments of both the Courts below are perverse or the result of misreading or misinterpreting the evidence on the file. So, I have no

hesitation in holding that no question of law much less a substantial question of law has arisen in the present case.

In view of above discussion, the appeal is without any merit and the same stands dismissed.

26.3.2015.
SN

(K.C. PURI)
JUDGE