

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.4096 of 2014 (O&M)

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Date of decision:20.7.2015

Balak Ram

.....Appellant

v.

Sukhdev and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Surinder Mohan Sharma, Advocate for the appellant.

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Inderjit Singh, J.

This regular second appeal has been filed by Balak Ram -appellant/plaintiff against Sukhdev-defendant and Baljit Kumar, Radhey Sham and Surat Ram-proforma respondents/defendants challenging the impugned judgment and decree dated 16.4.2014 passed by the learned District Judge, Panchkula, vide which the appeal filed by the plaintiff against the impugned judgment and decree dated 16.8.2012 passed by the learned Civil Judge (Junior Division), Panchkula, dismissing the suit of the plaintiff, has been dismissed.

The brief facts of the case are that Balak Ram-plaintiff filed suit against Sukhdev-defendant and Nand Lal and Surat Ram-proforma defendants for permanent injunction restraining defendant No.1 from interfering, in any manner, in the peaceful possession and enjoyment of the

plaintiff and defendants No.2 and 3 as tenant and also restraining them from raising any sort of construction upon the open land measuring 17 Bighas 2 Biswas as fully described in the plaint. The case of the plaintiff is that plaintiff and defendants No.2 and 3 are tenants under Sant Singh of 1/3rd 'Batai' of suit land since time of forefathers and are in physical as well as cultivating possession. Sant Singh sold part of land to various persons for construction of houses with consent of the plaintiff. The purchasers of the land have constructed their houses, hence the total land measuring 6 Bighas 10 Biswas has been used for construction of houses and rest 10 Bighas 12 Biswas of land is under cultivation of the plaintiff and defendants No.2 and 3. It is also the case of the plaintiff that Sant Singh had given 8 Biswas of land being part of Khasra No.137 to the plaintiff and defendants No.2 and 3 for construction of houses in lieu of allowing Sant Singh to sell part of suit property to other persons. It is also case of the plaintiff and defendants No.2 and 3 that they had constructed boundary wall upto DPC level and had constructed a 'Pucca' water tank for further construction over the portion in question, but defendant No.1 had started interfering into the peaceful possession of the plaintiff and defendants No.2 and 3 over the portion in question on the basis of sale deed claiming it to be his portion of land. It is further case of the plaintiff that Sant Singh had sold 8 Biswas of land without giving possession of the land, but only had given symbolic possession to defendant No.1. It is also the case of the plaintiff that Sant Singh was not in possession nor Gopal Singh was in possession, therefore, the question of taking possession from Gopal Singh does not arise.

Notice was given. Defendant No.1 appeared and contested the suit and also filed the counter claim for decree of permanent injunction with respect to the suit land by alleging to be in possession of the same. In the written statement, contesting the claim of the plaintiff, defendant No.1 denied all the averments of the plaintiff. It is stated that he had purchased the suit land measuring 8 Biswas on 20.9.1993 vide registered sale deed regarding which the mutation has been effected. Defendant No.1 is in physical possession of the suit land. Moreover, the suit property had already been alienated by the co-owners to the purchasers and in corresponding time most of them have already constructed residential houses. Defendant No.1 had already constructed wall upto DPC level and also had constructed water tank over the suit land measuring 0-8 Biswas, as such the plaintiff and defendants No.2 and 3 have no right to interfere in the possession of land.

After framing of the issues and the parties led their evidence, the learned Civil Judge (Junior Division), Panchkula, dismissed the suit of the plaintiff and decreed the counter-claim filed by defendant No.1. Aggrieved from the judgment and decree, the plaintiff filed first appeal before the learned District Judge which was dismissed vide judgment and decree dated 16.4.2014. Aggrieved from these judgments and decrees, the present regular second appeal has been filed.

At the time of arguments, learned counsel for the appellant relied upon the revenue record and stated that the plaintiff and defendants No.2 and 3 are in possession of total land measuring 17 Bighas 2 Biswas.

The findings given by the Courts below are not as per revenue record, evidence produced on the file and these are perverse and are liable to be set aside.

After hearing learned counsel for the appellant and going through the record, I find that first of all the findings of fact given by the Courts below are concurrent. No substantial question of law arises in this appeal. Further, I find that as per the case of the plaintiff himself, they were in possession over the suit land. As per the case of the plaintiff, he along with defendants No.2 and 3 are in possession over the suit land as tenant of 1/3rd 'Batai' and they have given the consent to Sant Singh owner to sell part of the land to various persons. It is stated in the plaint that the purchasers of the land have constructed their houses, hence out of the total land, 6 Bighas 10 Biswas is for construction of houses and rest 10 Bighas 12 Biswas of land is under cultivation of the plaintiff and defendants No.2 and 3. It is also the case in the plaint that 8 Biswas of land being part of Khasra No.137 was given by Sant Singh to the plaintiff and defendants No.2 and 3 for construction of houses in lieu of allowing him to sell part of suit property to other persons. The only grievance of the plaintiff is that they have given consent in settling the possession of the other persons who have purchased the plots and have raised the construction over it. In the present case of defendant No.1, they have never given the consent and possession is still with them.

From the evidence on record, it is clear that this 6 Bighas 10 Biswas of land had been sold by Sant Singh to various persons and even

defendant No.1 has produced copies of so many sale deeds, which are on the record. In these sale deeds, which are in favour of other persons, the plaintiff has given the note regarding his consent, as argued, but in the case of defendant No.1, it is written that possession has been taken from Gopal Singh. From the evidence on record, one thing is very clear that there are roads and streets in this 6 Bighas 10 Biswas land and so many purchasers have constructed their residential houses. Property of defendant No.1 is also 8 Biswas, which is a residential plot. Admittedly, this property is not being used for cultivation purposes and is a residential plot and surrounded by residential properties. Therefore, in these facts and circumstances, the entries of Jamabandi and Khasra Girdawris are of no use. The Courts below have correctly given the findings on these points. Otherwise also, it is settled law that possession of a vacant plot is to be treated of the owner. Nothing has been shown to this Court as to whether the plaintiff along with defendants No.2 and 3 are in possession of any other residential plots purchased by any other person. When they themselves were saying that 8 Biswas was given by Sant Singh to them and they have allowed Sant Singh to sell the property in plots etc. to various persons, who have raised the construction, therefore, the plaintiff in these circumstances cannot be held to be in possession of this residential plot which was purchased in the year 1993 and this suit has been filed in the year 2009 after about 16 years of the same. The findings of fact given by the Courts below are correct, as per law and evidence on record. In no way, the findings can be held as perverse or against the evidence. The judgments and decrees passed by the Courts

below are correct and as per law which do not require any interference from this Court and the same are upheld. No substantial question of laws arises in this regular second appeal.

Consequently, finding no merit in the regular second appeal, the same is dismissed.

July 20, 2015.

(Inderjit Singh)
Judge

hsp