

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

**Regular Second Appeal No.3643 of 2009
Date of decision: 7.9.2016**

Balwinder Singh

... Appellant

Versus

Gurdavinder Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Karanjit Singh, Advocate,
for the appellant.

Mr.Premjit Kalia, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the findings rendered by the lower appellate court whereby, the suit for injunction seeking restraint order against the defendant from forcible and illegal dispossession or interference into the peaceful possession over the Haveli, residential house, constructed over the land measuring 1K-2M bearing Khasra No.188 Min Charda, Khata/Khatauni No.118/350 as per jamabandi for the year 1998-1999 situate in village Boparai Baj Singh, Tehsil Ajnala, District Amritsar, has been dismissed.

Mr.Karanjit Singh learned counsel appearing for the appellant

submits that the appellant is none else but son of Gajjan Singh. Gajjan

Singh had earlier delivered possession of his half portion of the total land 2K-5M, which comes to 1K-2M, to the plaintiff on which the plaintiff constructed his residential house and haveli along with shed for parking harvesting combine tractor. Even the electric tubewell connection had been issued and cattle shed is also existing. The defendant has no concern with right, title or interest in the property. The defendant alleged to have purchased half portion vide sale deed dated 5.11.2001 from Gajjan Singh and under the garb of the same, wanted to take forcible possession. During the course of evidence, it has been proved that in sale deed dated 5.11.2001 regarding the possession having been entered towards the eastern side, was manipulated/tampered as the original sale deed did not contain such recital. This fact has been proved. Even Gajjan Singh appeared and deposed on the same lines. After appreciating the evidence, the trial court decreed the suit but the lower appellate court reversed the findings without noticing the aforementioned evidence. The findings of the lower appellate court are fallacious and perverse and urges this Court to set aside the judgment and decree under challenge and to formulate the substantial questions of law as culled out in the memorandum of appeal.

Per contra, Mr.Premjit Kalia learned counsel appearing on behalf of the respondents submits that certified copy of the sale deed reveals the aforementioned difference. Gajjan Singh did not challenge the sale deed muchless, the plaintiff. In the absence of the challenge to the sale deed, the person cannot take possession which is contrary to the record. If it so, the supplementary sale deed could have been executed at the instance of Gajjan Singh. Possession had been handed over way back in the year 2001 whereas

the suit has been filed in 2003. If it so, the suit could have been filed immediately. In rebuttal Mr.Karanjit Singh says that family settlement and other gifts at the behest of Gajjan Singh whereby the property in dispute had been given to the plaintiff by Gajjan Singh, has been proved on record. All these facts does not appear to have appreciated by the learned lower appellate court.

I have heard the learned counsel for the parties and perused the paperbook. The subsequent family settlement and gift deed etc. would have no value in the eyes of law as Gajjan Singh had saleable interest in respect of the land vide registered document. Registered document carries a presumption of truth. In my view, in a suit for injunction in the absence of challenge to the terms and conditions of the sale deed, the plaintiff cannot seek injunction vis-a-vis eastern and western side of the area in dispute. Certified copy of sale deed shown to this court recites that possession of the eastern side of the property had been handed over to the respondent. There is no challenge to the same. I am of the view that the lower appellate court being last court of fact and law actually appreciated the evidence and did not agree with the findings of the trial court which in opinion of this Court is in accordance with provisions of order 41 Rule 3 of CPC. No substantial questions of law arises for consideration.

The appeal is resultantly dismissed.

(AMIT RAWAL)
JUDGE

September 7, 2016

Paritosh Kumar

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No