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

**RSA-5346-2012 (O&M)
Date of decision : 05.12.2016**

Balvir Singh

... Appellant(s)

Versus

Pola and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Abhilaksh Grover, Advocate
for the appellant(s).

None for the respondent(s).

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the suit seeking following relief has been dismissed by both the Courts below:-

“Suit for permanent injunction to the effect that the defendants may be permanently restrained from interfering into peaceful possession of the plaintiff and from raising any type of construction and from changing the nature of the property in dispute by demolishing the existing construction or in any other way illegally and forcibly from the property shown in red colour in the site plan marked be words ABCD situated in the abadi of village Lassara, Tehsil Phillaur bounded as detailed below:-

<i>East</i>	<i>:</i>	<i>Plaintiff</i>
<i>West</i>	<i>:</i>	<i>Agriculture land of Lala</i>
<i>North</i>	<i>:</i>	<i>Plaintiff</i>
<i>South</i>	<i>:</i>	<i>Baldev Singh</i>

And also illegally and forcibly dispossessing therefrom except due course of law.”

Mr. Vikas Bahl, learned Senior Counsel assisted by Mr. Abhilaksh Grover, learned counsel appearing on behalf of the appellant-plaintiff submits that the possession of the plaintiff had been in continuous on the basis of the ownership as the land was owned and possessed by Waryam Singh, grandfather of plaintiff, who executed a valid Will dated 17.09.1976 in favour of three sons and after the death of Waryam Singh, Gian Singh, Mikar Singh, Karma Singh and Gurbachan Singh became owners in possession of the suit property, in equal shares. After death of Mikar Singh, his legal heirs become co-owners of the land. The plaintiff is in possession of the property, in dispute, as legal heir of Mikar Singh. The defendant(s) caused a perpetual threat and it is, in this background of the matter, the suit was filed. The plaintiff brought on record the documents i.e. Ex.P1 to Ex.P6 before the Courts below to prove the possession, but the Courts below have not appreciated the aforementioned evidence. *Fard jamabandi* for the year 2000-01 (Ex.P6) shows that the property had been in possession of Mikar Singh which devolved upon him on demise of Waryam Singh and under the column No.5, he has shown to be in possession. The defendant(s) have not been able to prove sale deed dated 07.11.1966 executed by Babu Ram in favour of Mikar Singh. Even the sale deed produced by the defendant(s) also proves the possession of Mikar Singh. All these facts have not taken care of, thus, urges this Court for setting aside the concurrent findings of fact as there is gross illegality and perversity.

There is no representation on behalf of the respondent(s)-defendant(s).

The case set up by the respondent(s)-defendant(s) before the trial Court was that the suit property was previously owned and possessed

by Waryam Singh. The appellant-plaintiff or any legal heir of the Waryam Singh had got nothing to do with the property, in question and this fact was also clear from the agreement to sell as witnesses by legal heirs of Waryam Singh and as well as the sale deed, the property, in dispute, was sold to the defendant(s), who is the owner in possession of the property. The plaintiff has miserably failed to lead any documentary evidence qua his possession.

I have heard the learned counsel for the appellant-plaintiff and appraised the paper book and of the view that *Fard* (Ex.P6) is for the year 2000-01, whereas the sale deed is of 2003. It was incumbent upon the plaintiff to prove the latest jamabandi post the sale deed to show the possession. Having failed to do so, the plaintiff has not discharged the onus and rightly so, the Courts below have formed an opinion qua having not proved the possession. For claiming possession, the plaintiff has to prove the long and continuous uninterrupted possession and in the absence of the same, rightly so, the Courts below have declined the relief.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. The second appeal is dismissed.

05.12.2016

Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No