

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

**CM No.14431-C of 2016 in/and
RSA No.3533 of 2016
Date of Decision: 18.11.2016**

Joginder Kaur

.....Petitioner

Vs

Angrej Singh and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Harmandeep Singh Sullar, Advocate
for the applicant/appellant.

RAJ MOHAN SINGH, J.

CM No.14431-C of 2016

For the reasons mentioned in the application and in view of affidavit filed by the learned counsel for the applicant/appellant, order dated 26.09.2016 is hereby recalled.

Appeal is ordered to be restored to its original number and the same is taken up for final hearing.

RSA No.3533 of 2016 (O&M)

[1]. Plaintiff is in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for mandatory and permanent injunction.

[2]. Brief facts are that the plaintiff/appellant filed a suit for mandatory and permanent injunction claiming that she was owner in possession of the suit property comprising of three rooms, verandah and *sehan* marked as 'ABCDEF' in the site plan for the last more than 50 years. The suit property was situated within *abadi deh* of village Salpani Kalan. Earlier her husband was in possession of the suit property. The property was having defined dimensions. Plaintiff claimed that she was living in the suit property from the very beginning and had planted *kikar* tree and had also placed *kurari* and *khuntas* in the *sehan* in front of the house. House of the defendants were situated towards eastern side of the property and wall of the defendants separated the suit property from the house of the defendants.

[3]. It was asserted by the plaintiff that defendants are having evil eye on the property of the plaintiff and want to take forcible possession of the same. Plaintiff also asserted that about a week back, defendants tried to take forcible possession of the property and the situation was timely averted with the intervention of the respectable persons of the village. On 01.06.2007, defendants installed two gates in the wall 'EF' illegally. The request of the plaintiff did not pay any heed. With this background the suit in question was filed before the trial

Court.

[4]. Defendants contested the suit on the premise that the plaintiff has already left the village and is living in Yamuna Nagar for the last 25 years. Sons of the plaintiff namely Sukha Singh and Gurbaj Singh were living in the village. They sold 8 *Marlas* of land i.e.70' x 33' for a total sale consideration of Rs.8,750/- and after receiving the amount, they gave possession of the area sold to Man Singh, Mukhtiar Singh etc. A writing to that effect was executed by the vendors and the same was duly signed and thumb marked by Sukha Singh and Gurbaj Singh in the presence of witnesses. The money also changed hands in front of the witnesses. The possession was duly handed over to the defendants namely Man Singh, Nidan Singh and Mukhtiar Singh on 01.02.1999 and since then the defendants are continuing in possession of the suit property.

[5]. It was further alleged that plaintiff had also filed a suit for permanent injunction against defendant Nos.5 to 7 titled "*Joginder Kaur vs. Man Singh etc*". The site plan adduced in the said suit and the site plan submitted in the present suit were materially different. The said suit was got dismissed as withdrawn. The defendants had opened windows and doors in the property purchased by them and were using the same for

the purposes of tethering their cattles, placing their agricultural implements in the site in question. The complaint made by the plaintiff to District Administrator, Kurukshetra was duly inquired into by the Police and nothing incriminating was found in it. Possession of the defendants was found. Plaintiff and her sons admitted in their statements that the possession of the property was with the defendants on account of purchase from Sukha Singh and Gurbaj Singh.

[6]. After completion of pleadings, both the parties went to trial on the following issues:-

- “1) *Whether the plaintiff is entitled for injunction as prayed for in the plaint? OPP*
- 2) *Whether plaintiff has no locus standi and cause of action to file the suit? OPD*
- 3) *Whether the suit is not maintainable? OPD*
- 4) *Whether the plaintiff has not come to the Court with clean hands, if so to what effect? OPD*
- 5) *Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
- 6) *Relief.”*

[7]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[8]. After appraisal of the evidence, trial Court dismissed the suit vide judgment and decree dated 19.02.2013 and the

same was upheld by the lower Appellate Court vide judgment and decree dated 19.11.2015.

[9]. I have heard learned counsel for the appellant.

[10]. The plea of the plaintiff that she was living in the house in question in the capacity of owner has been found to be non-existent. The possession of the defendants on account of purchase of the property from Sukha Singh and Gurbaj Singh has been proved vide document Ex.D-1. The property was situated within *abadi* of the village. Since the sale deed cannot be executed being the property in *abadi*, therefore, the possession proceeds the title. This fact has been admitted by the plaintiff while appearing as PW-1. In the event of alleged dispossession of the plaintiff at the hands of the defendants, she should have amended her suit as a suit for possession instead of seeking mandatory injunction.

[11]. It has been admitted by the plaintiff that another suit titled "*Joginder Kaur vs. Man Singh etc.*" was previously filed by her which was later on dismissed for non-appearance of the plaintiff under Order 9 Rule 8 CPC vide order dated 15.01.2007. Present suit came to be filed during pendency of the earlier suit and the factum of earlier suit has not been disclosed by the plaintiff in the subsequent suit. No reasons has been disclosed

as to why the first suit was got dismissed in default. Plaintiff got her presence marked in both the suits simultaneously and later on she did not take interest in the previous suit, which was subsequently dismissed in default. The factum of pendency of earlier suit was conveniently concealed by the plaintiff in the present suit.

[12]. The plaintiff while appearing as PW-1, in her cross-examination could not show the dimensions/boundaries of the house. This fact has been further fortified from the statement of Mahinder Singh, who appeared as PW-2. Mohinder Singh has admitted in his statement that plaintiff PW-1 is living in Yamuna Nagar in a rented premises. Non-mentioning of boundary by the plaintiff and statement of PW-2 coupled with the facts and circumstances would give irresistible conclusion that plaintiff is non-resident of the village for the last many years. She is living in Yamuna Nagar along with her one son and involved in the business of dairy.

[13]. Plaintiff had no knowledge about the suit property. In a suit for permanent injunction, possessory title of the parties is to be seen. Possession of the defendants is writ large on the record, therefore, plaintiff has miserably failed to prove her possession over the suit property.

[14]. The questions of law as formulated in para No.9 of the grounds of appeal do not arise at all. Question No.(i) is a pure question of fact. Question No.(ii) does not arise inasmuch as that even if, Ex.D-1 is ruled out from consideration that would not change the factum of possession on the spot. The property being situated in *abadi* of the village, has to be evaluated in terms of possession. Possession normally proceeds the title to the property situated in *abadi deh* of the village, therefore, Ex.D-1 can be a material document for the purposes of deciding the possessory right of the parties to the suit property.

[15]. Similarly, question No.(iii) does not arise inasmuch as that the ownership is wholly irrelevant in the suit in question. Moreover the onus is on the plaintiff to adduce material evidence to show her ownership. No material document has been produced to show the factum of ownership in respect of suit property situated within *abadi* of the village. On the other hand, defendants have relied upon Ex.D-1, which can be relied for collateral purposes to show that possession was duly delivered to the defendants by Sukha Singh and Gurbaj Singh pursuant to the transaction Ex.D-1. Even the statement of Mahinder Singh PW-2 proved the factum of the plaintiff being non-resident of the village.

[16]. In view of aforesaid, totality of facts and circumstances would reveal that plaintiff has miserably failed to prove her possession over the suit property. No law points, much less substantial questions of law are involved in the present appeal. Appeal is accordingly dismissed.

[17]. Since the main appeal has been dismissed on merits, therefore, the applications for condoning the delay in re-filing and filing the appeal i.e. CM Nos.9259-C of 2016 and 9258-C of 2016 have become totally inconsequential. All other civil misc. applications are disposed of in the light of decision of the main appeal.

November 18, 2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No