

RSA No.2837 of 2015 (O&M)

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

RSA No.2837 of 2015 (O&M)

Date of Decision: January 21, 2016

Raj Singh (deceased) through LRs Sukhjinder Kaur & others

...Appellants

Versus

Gamdoor Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Kulbir Sekhon, Advocate
for the appellants.

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.6972-C of 2015

Prayer in this application is for condonation of delay of 3 days in re-filing the appeal.

For the reasons mentioned in the application, which is duly supported by the affidavit of Krishan Singh son of Raj Singh, the same is allowed. Delay of 3 days in re-filing the appeal stands condoned.

CM No.6973-C of 2015

Prayer in this application is for bringing on record legal representatives of Raj Singh-appellant who is stated to have died on 26.02.2015 during the pendency of this appeal, the details of the legal representatives are mentioned in para 1 of the application. The

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application is supported by the affidavit of Krishan Singh son of Raj Singh.

For the reasons mentioned in the application, the present application is allowed. Legal representatives as mentioned in para 1 of the application are brought on record, subject to all just exceptions and for the purpose of the present litigation only. Memo of parties appended alongwith the appeal, is taken on record.

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Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Sri Muktsar Sahib, dated 21.02.2014, whereby the suit for permanent injunction filed by the plaintiff restraining the respondent-defendants from dispossessing him in the light of the fact that the said land on which the house has been constructed by him as detailed in the suit i.e. Khewat No.91/88, Khatauni No.151, Khasra No.191 (1-16), total area measuring 1 Kanal and 16 Marlas, whereby, the ancestors of the plaintiff, on the basis of oral gift deed by Baljit Singh, Sandura Singh, Anand Singh and Mukand Singh, have become owner of the land in question, stands dismissed, appeal against which preferred by the appellant-plaintiff has been dismissed by the Additional District Judge, Sri Muktsar Sahib, on 21.10.2014.

It is the contention of the learned counsel for the appellants that appellant-plaintiff, on the basis of the gift deed,

became owner in possession of the disputed land. On the basis of the said gift deed and the ownership on the land in question, he had constructed his residential house, where he is residing alongwith his family. He contends that the respondents intend to dispossess the appellant-plaintiff from the house in question, therefore, the said suit has been filed. He contends that respondents No.7 and 8, namely, Mohan Singh and Darshan Singh, sons of Baljit Singh, admitted the factum of the oral gift deed. He, on the basis of the said admission, contends that the findings recorded by the Courts below that the appellant-plaintiff has not been able to associate the gift deed with the land on which the house has been constructed, deserve to be set aside. In any case, the injunction as prayed for should have been granted in the light of the fact that there is an admission that he is in possession of the house. Prayer has, thus, been made for setting aside the impugned judgments and decree passed by the Courts below and decreeing the suit of the appellant-plaintiff.

I have considered the submissions made by the learned counsel for the appellants and with his able assistance, have gone through the impugned judgments but do not find any illegality in the same.

Admittedly, the case of the appellant-plaintiff is that he is the owner in possession of the land in question, in pursuance to the oral gift deed and he, therefore, proceeded to construct the house.

The factum of the oral gift deed, except for having been admitted by defendant-Rajinder Singh who appeared as DW-1, would not establish the oral gift deed as such as the same had not been admitted by the other co-sharers of the property. That apart, same has never been acted upon as it has not been reflected in the revenue records anywhere.

The other evidence which has been brought on record by the the appellant-plaintiff in the form of the ration card and the electricity bills to show the house is on the disputed land, again cannot be said to be of any help to him because these documents do not indicate as to where the house is actually situated. The witnesses who had appeared to prove the said documents, have categorically stated that they do not know the exact location of the house and the proof with regard to the khasra number where the house is situated.

Even the appellant-plaintiff has, in the cross-examination, not been able to disclose any khasra number of the plot. His cross-examination further shows that he has not been able to disclose the area of the suit property. All the witnesses who had appeared in support of the appellant-plaintiff, have not been able to support the said contention of the appellant-plaintiff.

It may be added here that the site plan (Ex.P-1) was produced on record which is alleged to have been drawn and

prepared by Surinder Singh Arora, Clerk of Shri Ashok Kumar, Advocate. He has admitted in his cross-examination that he had not mentioned any scale in the site plan and that he is neither diploma holder nor authorized by the Government to prepare the site plan. He has also admitted the fact that he had neither called any revenue official at the time of preparation of the site plan nor does he has any knowledge of the revenue record.

The photographer, Binder Singh, has appeared as PW-4 to prove the photographs Ex.P-6 to P-9 alongwith bill Ex.P-10 and CD Ex.P-11, however, could not specify the khasra numbers. He also could not state that the said house was possessed by the appellant-plaintiff.

In the light of the above evidence, it cannot be said that the appellant-plaintiff has been able to establish the oral gift deed in his favour, especially when none of the revenue records so reflect. It may be added here that even the possession over the land in question has not been reflected in the revenue records.

As regards the contention of the learned counsel for the appellants that the injunction should have been granted to protect his possession over the property, suffice it to say that the basic plea of the plaintiff was with regard to his ownership which he could not prove and if it is said to be permissive possession, then it has not been reflected in the revenue records. The house which is alleged to

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have been constructed by the plaintiff, the location thereof has not been established on the records of the case on the basis of the evidence which has been produced by him. His stand, therefore, with regard to the injunction qua his possession would be stand contrary to his claim in the suit and therefore, the Courts have rightly declined the same. Injunction cannot be granted against a true owner in possession of the property.

A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

CM No.6974-C of 2015

In view of the order passed in the main appeal, the present application for restraining the respondents from interfering into the peaceful possession of the appellant on the suit land, during the pendency of the appeal, has become infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

January 21, 2016