

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

**R.S.A No.3003 of 2015 (O&M)
Date of decision :15.02.2016**

Natha Singh and another

..... Appellants

Versus

Dalbir Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.K.R.Dhawan, Advocate
for the appellants.

DARSHAN SINGH,J

CM No. 7183-C of 2015

This application has been filed under Section 5 of the
Limitation Act for condonation of delay of 11 days in filing the appeal.

Heard on the application.

In view of the reasons mentioned in the application, the
application stands allowed and the delay of 11 days in filing the appeal is
hereby condoned.

R.S.A No. 3003 of 2015(O&M)

The present appeal has been preferred against the judgment
and decree dated 05.01.2015 passed by the learned District Judge,
Ferozepur, vide which the appeal filed by the appellant-plaintiff against
the judgment and decree dated 29.01.2013, passed by the learned Civil
Judge (Jr. Division), Zira, has been allowed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The plaintiff-respondent has instituted the suit for permanent injunction restraining the appellants-defendants from forcibly and illegally dispossessing him the suit property on the grounds *inter alia* that the suit property is owned by the Central Government. The plaintiff is in peaceful, continuous and cultivating possession thereof for the last 40-45 years. Prior to him, his father was in possession thereof. The father of the plaintiff had reclaimed the suit land by spending huge amount and made it fit for cultivation. Appellants-defendants have no concern with the suit property. Hence the suit.

4. Appellants-defendants contested the suit on the grounds *inter alia* that Geja Singh, father of the plaintiff had entered into an agreement to sell the suit property in favour of defendant no.1 and his brother Barkat and received a sum of Rs. 86,500/- at the time execution of the agreement to sell dated 12.11.1997 and delivered the possession of the suit land to them. Since then, appellant-defendant no.1 and Barkat were in possession of the suit land as prospective vendees. Barkat had died. Appellant-defendant no.2 is his widow. It was agreed that when the suit land will be transferred in the name of Geja Singh by the Central Government, he will give notice within three months to get the suit land transferred in the name of the appellants. However, he has died and the plaintiff has not tried to get the suit land transferred in the names of the legal heirs of Geja Singh. So, the ownership remained with the Central Government. The plaintiff has resiled from the aforesaid agreement dated

12.11.1997 after the death of Geja Singh and wants to get the possession of the suit land forcibly for which a criminal case was registered against the plaintiff and his associates. The Khasra Girdawri entries have also been corrected by Assistant Collector-I Grade in their favour. With these pleas, they pleaded for the dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP
2. Whether the plaintiff has no cause of action to file the present suit?OPD
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Relief.

6. On appreciating the evidence and material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit of the plaintiff vide judgment and decree dated 29.01.2013.

7. Aggrieved with the aforesaid judgment and decree, the plaintiff-respondent preferred the appeal and the same was allowed by the learned District Judge, Ferozepur, vide impugned judgment and decree dated 05.01.2015. Hence this Regular Second Appeal.

8. I have heard Mr. K.R.Dhawan, Advocate, learned counsel for the appellants and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellants contended that plaintiff is not in possession of the suit property. Geja Singh, the father of plaintiff had executed agreement to sell dated

12.11.1997 in favour of appellant-defendant no.1 and his brother Barkat (since deceased). At the time of execution of the agreement, he has received a sum of Rs. 86,500/- and the possession of the suit land was delivered to the appellants. Since then, they are in possession of the suit property. Learned counsel for the appellants contended that the plaintiff-respondent is bound by the agreement dated 12.11.1997 executed by his predecessor-in-interest. Wherein, there is a clear recital regarding delivery of possession. Thus, he contended that appellants are in possession of the suit property as prospective vendees. Now, the plaintiff-respondent wants to forcibly and illegally dispossess them and with that intention, he had filed this suit. Even though, he is out of possession.

10. I have duly considered the aforesaid contentions.

11. This fact is not disputed that the land in dispute is owned by the Central Government. The learned First Appellate Court has categorically mentioned that the jamabandi for the year 2002-2003 Ex.P-1 and Khasra Girdawri from *kharif* 2008 to *rabi* 2009 Ex.P-2 indicates the possession of the plaintiff over the suit land. Thus, even after 12.11.1997, the date of alleged agreement, the plaintiff has been shown continuously in possession of the suit property.

12. Appellants are asserting their rights qua the land in dispute on the basis of agreement to sell dated 12.11.1997. The learned trial Court has declined the relief to the plaintiff primarily on the ground that the Khasra Girdawri entries which stood in favour of the plaintiff-respondent have been corrected in favour of the appellants. But, there is no dispute that the Commissioner, Ferozepur Division vide order dated

14.08.2012 Ex.P-4 has set aside the order dated 03.12.2009 passed by AC-II Grade and the appellate order dated 26.08.2010 passed by the Collector- Ist Grade, Zira has remanded the case to AC-II Grade, Zira for fresh decision after hearing both the parties. Thus, the order of correction of Khasra Girdawari entries in favour of the appellants no more exists.

13. Simple recital in the agreement to sell cannot establish the possession of the appellants over the suit land particularly when these recitals are not supported from any corroborative documentary evidence. It is alleged that the appellants were delivered the possession of the suit property on the basis of agreement to sell dated 12.11.1997, but the revenue entries continued in favour of the plaintiff even thereafter. The appellants have not taken any step for correction of the revenue entries prior to the year 2009. So, they kept silent for more than 12 years. They have also not filed any suit for specific performance to enforce the agreement to sell dated 12.11.1997. They cannot claim themselves to be in possession of the suit property as a prospective vendees in pursuance of the agreement to sell dated 12.11.1997, as it is not proved that they got the possession of the suit property by dint of the agreement. The plaintiff is recorded to be in possession of the suit property in the revenue record. The presumption of truth is attached to the entries in the jamabandi. Appellants have not been able to rebut the said statutory presumption. So, the learned First Appellate Court has rightly held the plaintiff-respondent entitled for the decree of permanent injunction and there is no reason to differ with the well reasoned findings recorded by the learned First Appellate Court.

14. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

15. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

February 15, 2016

s.khan

(DARSHAN SINGH)
JUDGE