

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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C.M. No. 9446-C of 2015 and
RSA No. 3847 of 2015 (O&M)

Date of decision: May 09, 2016

Mahender and others

...APPELLANTS

Versus

Jai Chand (deceased) through his legal heirs

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Om Parkash Sharma, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J.

C.M. No. 9446-C of 2015

Prayer in this application is for condonation of delay of 47 days
in re-filing the appeal.

For the reasons mentioned in the application, which is duly
supported by the affidavit of the clerk of the counsel, the present application
is allowed. Delay of 47 days in re-filing the appeal stands condoned.

RSA No. 3847 of 2015

Challenge in this appeal is to the judgment and decree passed
by the Civil Judge (Junior Division) Faridabad dated 15.02.2014, whereby
the suit for permanent injunction restraining the appellants-defendants from
interfering in the peaceful possession of the respondents-plaintiffs in the
suit property, as mentioned in the site plan marked with letters A B C D E F

Village Sheikhpur, Tehsil Ballabgarh, District Faridabad, as detailed in the suit and further from raising any construction over the suit property, in any manner, has been decreed, appeal against which preferred by the appellants-defendants has been dismissed by the Additional District Judge, Faridabad on 09.02.2015.

2. It is the contention of the learned counsel for the appellants that the Courts below have not properly appreciated the pleadings and the evidence brought on record. He asserts that the original owners in possession of the suit property were Lekh Raj and Layak Ram, which was forming part of land bearing Khewat No. 7/1 and 7/3, which had been purchased by them in open auction vide sale certificates bearing No. 277 dated 28.03.1967 and 279 dated 20.04.1967 duly issued by Rehabilitation Department, Gurgaon. Lekh Raj and Layak Ram executed a general power of attorney in favour of the respondents-plaintiffs on 12.04.1993. The plaintiff being the general power of attorney holder executed a sale deed bearing No. 3253 dated 08.12.1993 measuring 4 Marlas in favour of Harpal son of Rattan, sale deed No. 3254 dated 08.12.1993 of land measuring 12 ½ marlas in favour of Prem Singh, predecessor-in-interest of appellant-defendant No. 1 and appellant-defendant No. 5, and sale deed No. 3255 dated 08.12.1993 for land measuring 8 ½ Marlas in favour of Rangal-appellant-defendant No. 2. The possession was also handed over and, thus, the appellants-defendants became the absolute owners in possession of their respective shares over the suit property. In the light of these sale deeds, it is apparent that a particular area was sold to them by a duly authorized person. He contends that the site plan, as filed by the respondents-plaintiffs, is quite different from that of the suit property as it is existing on the spot because

the boundaries of the suit property do not tally. There is no documentary evidence produced on record by any of the parties showing possession over the suit property, which, admittedly, is a vacant land. The findings, thus, recorded by the Courts below cannot sustain and deserve to be set aside and the suit of the respondents-plaintiffs deserves to be dismissed.

3. I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the impugned judgments.

4. It is not in dispute that the owners in possession of the suit land and the land, which was sold to the respondents-defendants by the appellants-plaintiffs by way of three different sale deeds, referred to above, were Lekh Raj and Layak Ram on the basis of two sale certificates issued by the Rehabilitation Department, Gurgaon, having been purchased by them in open auction. It is also not in dispute that earlier a dispute has arisen between Layak Ram and Lekh Raj on one side and the predecessors-in-interest of the respondents-defendants on the other side, namely, Prem Singh, Mahender Singh, Rangal Singh, Rattan, Rajpal and Harpal. Layak Ram claimed himself to be the owner-in-possession of plot No. 7 measuring 115'x91' and had shown boundaries of the property, as detailed in Ex. P-5. The case ended in a compromise, which has been placed on record as Ex. P-6 and their statements are Ex. P-7. Another suit was filed by Lekh Raj and that suit was decreed on the basis of a compromise, judgment and decree thereof are Exs. P-1 and P-2 and the statement of the parties is Ex. P-4, where the defendants were the same as in the earlier suit, namely, Prem, Mahender, Rangal, Rattan, Rajpal and Harpal. They had admitted correctness of the site plan Ex. PW4/A and they recited in their statements

Ex. P-4 that Lekh Raj was owner of plot measuring 71'x33' and the defendants were owners of plot measuring 77'x58'. It was also provided that there was a 6 ft. passage abutting the plot of Jai Chand-plaintiff, which was meant for Jai Chand, Lekh Raj and the defendants. The site plan Ex. PW4/A is on record, which has been admitted in the suit which has ended in a compromise and in that site plan, the suit land (plot) of Jai Chand-respondent-plaintiff is shown on the North side. In the present suit also, the respondent-plaintiff is claiming himself to be the owner in possession of that very plot.

5. As is apparent from the earlier lis, the appellant-defendants or their predecessors-in-interest, who were parties to the earlier litigation, were owners in possession of their property, which was measuring 77'x58', which property they are still in possession and thus, cannot claim any right over the suit land, which is other than that property. The findings, as recorded by the Courts below, thus, cannot be faulted with.

6. The findings, thus, recorded by the Courts below are based upon proper appreciation of the pleadings and the evidence brought on record by the parties which do not call for any interference.

7. No other point has been raised or argued by the counsel for the appellants.

8. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

9. There is no substantial question of law in the present appeal, which requires consideration of this Court.

10. In view of the above, finding no merit in the present appeal, the same stands dismissed.

May 09, 2016
pj

(AUGUSTINE GEORGE MASIH)
JUDGE