

In the High Court of Punjab and Haryana at Chandigarh

**R.S.A. No. 3904 of 2015 (O&M)
Date of Decision: January 25, 2016**

Rajinder Singh

... Appellant

Versus

Kishan (Bhagat) (deceased) through his LRs and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers may be allowed to see the judgments?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present: Mr. Ram Pal Verma, Advocate,
for the appellant.

Paramjeet Singh Dhaliwal, J. (Oral)

CM-9550-C-2015

Having heard learned counsel for the appellant and for the reasons recorded in the civil misc. application, same is allowed. Delay of 168 days in refiling the appeal is condoned.

RSA No. 3904 of 2015 (O&M)

This regular second appeal has been preferred by the appellant-plaintiff against the judgment and decree dated 23.12.2011 passed by learned Civil Judge (Junior Division), Sonapat, whereby suit filed by the appellant/plaintiff for declaration with consequential relief of permanent injunction has been dismissed, as well as, against the judgment and decree dated 12.08.2014 passed by learned Additional District Judge, Sonapat,

whereby appeal preferred by the appellant/plaintiff has also been dismissed.

For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiff filed a suit for declaration with consequential relief of permanent injunction on the ground that he is owner of immovable property of House No. 685, Bainyapur Khurd, known as Rajiv Nagar, District Sonapat, measuring approximately 67-70 yards khasra no. 5/10 and he is residing peacefully since 1990. After some time, defendants warned the plaintiff to vacate the property. However, plaintiff has purchased the said property from actual owner through Saroha Properties and since then he is in possession over the same. It is further averred in the plaint that defendants have not only threatened the plaintiff to vacate the property, but forcibly tried to enter in the house of plaintiff on 21.04.2005. The plaintiff made several requests to defendants not to interfere in his legal possession over the property in question, but to no avail. Hence, suit was filed.

Upon notice, defendants appeared and filed written statement and took preliminary objections with regard to maintainability; locus standi; cause of action, concealment of material facts etc. maintainability; estoppel; suppression of material facts, etc. The defendants denied the allegations levelled against them on the ground that defendant no.2 is owner in possession of 73 sq. yards out of 450 sq. yads of land comprised in Khewat No. 100/85, Khata No. 148, Rectangle and Killa Nos. 5/10/2 and 10/4. It

was averred that defendant no.2 purchased the above said land from one Sarla Devi wife of Prem Chand vide registered sale deed No. 4639 dated 10.05.2004. Thereafter, defendant no.2 sold out the land to Suresh Kumar for the sale consideration of Rs.80,000/- through an agreement to sell.

On the basis of the pleadings of the parties, the Court of first instance framed the following issues:-

- “1) *Whether the plaintiff is legal owner and is in possession of the suit property as detailed in para no.1 of the plaint? OPP*
- 2) *If issue no.1 is proved then whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP*
- 3) *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 4) *Whether the plaintiff has neither locus standi for any cause of action to file the present suit? OPD*
- 5) *Whether the plaintiff has come to the court with unclean hands? OPD*
- 6) *Whether the defendants are entitled for special costs under Section 35A CPC? OPD*
- 7) *Relief.”*

The Court of first instance, after perusal of the evidence led by the parties, dismissed the suit vide judgment and decree dated 23.12.2011. Against that, plaintiff preferred an appeal, which has also been dismissed by the lower appellate Court vide judgment and decree dated 12.08.2014. Hence, this second appeal.

I have heard learned counsel for the appellant.

Learned counsel for the appellants has submitted that the following substantial questions of law formulated in para no. 9 of grounds of appeal, arise for consideration in this second appeal:-

- “i) Whether the ld. lower courts below have mis-read and misinterpreted the evidence on record?*
- ii) Whether injunction can be dismissed when the possession over the land has been proved?*
- iii) Whether the plaintiff can be discarded from his lawful right?”*

Learned counsel for the appellant contended that the impugned judgments and decrees passed by both the Courts below are the result of misreading of evidence on record. The judgments and decrees of both the Courts below are based on conjectures and surmises. Therefore, the impugned judgments and decrees are liable to be set aside.

I have considered the contentions raised by learned counsel for the appellant and perused the record.

Both the Courts below, after appreciating the evidence on record, have recorded findings of fact with regard to the existence of passage. The Court of first instance recorded the following findings:-

“7. Both these issues are being taken together being interconnected and just to avoid the repetition of words. The onus to prove these issues was on the plaintiff and in order to prove these issues. Plaintiff Rajinder Singh himself stepped into the witness box as PW-1 and tendered affidavit Ex.PW1/A alleging that he is owner over suit property since 1990 shown in site plan filed by him in red colour and has purchased the suit property through Saroha properties and defendants tried to forcibly entered into the suit property. Similarly, PW-2 Mai Chand, PW3-Azad Singh, PW4-Ramesh, PW5-Vinod have tendered their respective affidavits deposing that the plaintiff is in possession over the plot in dispute since last 20 years who has dispossessed forcibly by defendants through goondas type associates. The plaintiff has claimed that he has purchased suit

land from actual owner through Saroha Properties, however, there is no document on record to prove ownership of the plaintiff over the suit property and photocopy of agreement dated 31.10.2000 available on file is merely an acknowledgment on letter pad of Saroha Properties mentioning that one shop measuring 10x25 sq. yards and one plot measuring 100 sq. yards have been sold to the plaintiff, has no evidentiary value in the eyes of law and number of the property has also not been mentioned in the said document, meaning thereby it was also not clear that the said document relates to suit property. As far as photocopy of agreement to sell and receipt dated 07.08.2011 available on the file, itself does not confer any right, title or interest in the immovable property in favour of the plaintiff and agreement to sell is itself not proved, according to the provisions of Indian Evidence Act. The plaintiff has further miserably failed to mention in which portion of khasra no. 5/10, he is in possession. Photocopy of election card, ration card and electricity bill available on the file further does not relate with the suit property and other photocopies filed by plaintiff does not prove ownership as well as possession over suit property. Site plan filed by plaintiff also remained unproved on file due to non-examination of draftsman. On the other hand, the defendants have proved their ownership as well as possession over the suit property vide registered sale deed No. 4639 dated 10.08.2004 Ex.DW-3/4 and from the testimonies of DW-3 Anup Singh and DW-4 Ram Kumar. As such, from the testimony of the plaintiffs witnesses, the plaintiff has miserably failed to prove its stand taken in the plaint and hence issues no. 1 & 2 are decided against the plaintiff.”

Said findings have been affirmed by the lower appellate Court.

Concurrent findings of fact have been recorded by both the

Courts below. Learned counsel for the appellant could not show that the said findings are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. It is settled law that this Court cannot interfere in the findings of fact recorded by the Courts below on appreciation of evidence brought on record, unless the findings are perverse. No perversity has been pointed out by the learned counsel for the appellants. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine

January 25, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge