

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

RSA No.4684 of 2015 (O&M)

Date of decision : 18.03.2016

Balwinder Singh @ Tota and others

.....Appellants

Versus

Tarsem Lal @ Sema

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Ramesh Sharma, Advocate for appellant.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment and decree dated 30.05.2015, passed by learned District Judge, Kapurthala, whereby the appeal filed by the appellants-defendants against the judgment and decree dated 19.11.2014, passed by learned Civil Judge (Senior Division) Kapurthala has been dismissed.

2. For the sake of convenience, the reference of the parties shall be given as per the original suit.
3. Plaintiff-respondent Tarsem Lal alias Sema filed the suit

for injunction against the defendants-appellants on the grounds that he has purchased the suit property by dint of the written agreement about 30 years back. Since then, he is in its possession being the owner. He has been tethering his cattle on the land and has also raised construction of two rooms up to lintel level. He has also installed the fodder cutting machine. The defendants have no right, title or concern with the suit property but they are trying to interfere in his peaceful possession. Hence, the suit.

4. Appellants-defendants contested the suit on the grounds *inter alia* that previously Balbir Singh resident of Khanpur was the owner of the suit land. It was never purchased by the plaintiff alone, rather it was purchased by the father of the parties with the earnings of the joint family. The defendants denied that the plaintiff has been tethering his cattle or has installed the 'Toka' machine in the suit plot. They also denied the factum of construction over the suit property as alleged by the plaintiff and prayed for dismissal of the suit.

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

1. Whether plaintiff is entitled to the relief of permanent injunction?
OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the plaintiff has got no locus standi or cause of action to file the present suit? OPD
4. Whether the plaintiff has not come to the court with clean hands, if so, its effect? OPD

5. Whether the plaintiff has concealed the material facts from the court, if so, its effect? OPD

6. Relief.

6. On appreciating the material on record, the learned trial court vide impugned judgment and decree dated 19.11.2014 decreed the suit of the plaintiff-respondent for permanent injunction restraining the defendants from interfering into his peaceful possession over the suit land illegally, forcibly and from creating any obstruction in the construction work of the plaintiff except by following the due course of law. Aggrieved with the aforesaid judgment and decree the defendants preferred the appeal. The same has also been dismissed by the learned First Appellate Court vide impugned judgment and decree dated 30.05.2015. Hence this regular second appeal.

7. I have heard learned counsel for the appellant and carefully examined the paper-book.

8. Learned counsel for the appellant contended that from the statement of appellant Balwinder Singh and his witnesses, it is established that the suit property was purchased by the father of the defendants and the plaintiff. At that time the parties were living jointly. The funds were contributed from the income of the joint family. So, they are also entitled to equal share in the suit property. He further contended that the learned courts below have not considered the material on record in right perspective. The possession of the plaintiff over the suit property is not established. So, he was not entitled for any injunction.

9. I have duly considered the aforesaid contentions.

10. The plaintiff-respondent claims to be in exclusive possession of the suit property on the basis of the agreement-cum-receipt Ex.PW1/A and the copy of the complaint Ex.P2 made to the Senior Superintendent of Police Kapurthala. The plaintiff has taken the plea that he has purchased the suit land from Balbir Singh about 30 years ago on the basis of agreement copy Ex.PW1/A and, thereafter he raised the construction in the suit property. He has also adduced the oral evidence in the shape of statements of PW1 Arjun Singh, PW3 Gurdas and PW4 Maya, who had corroborated the version of the plaintiff. This oral evidence is also corroborated from the agreement Ex.PW1/A, complaint Ex.P2 and photographs Ex.P3 & Ex.P4. The photographs show the construction over the suit property. The learned First Appellate Court has also observed that the respondent-plaintiff was found standing in the suit property in those photographs. The witnesses examined by the appellants have not disputed the photographs of the suit property Ex.P3 & Ex.P4.

11. No cogent evidence has been adduced by the appellant to establish his plea that the suit property has been purchased from the fund of the joint family.

12. The agreement Ex.PW1/A can be taken into consideration for the collateral purpose, that is, with respect to the possession of the plaintiff-respondent. The said agreement supports the possession of the plaintiff-respondent over the suit property. Thus, he cannot be dispossessed forcibly or illegally by the appellants.

13. Therefore, I do not find any illegality in the impugned judgment and decree passed by the learned courts below.

14. Resultantly, the present appeal has no merits and the same is hereby dismissed.

15. However, no order as to costs.

18.03.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**