

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

**R.S.A No.965 of 2016 (O&M)
Date of decision :01.03.2016**

Arjun Singh

..... Appellant

Versus

Rattan Chand and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Arvind Kashyap, Advocate
for the appellant.

DARSHAN SINGH,J

This Regular Second Appeal has been preferred by the plaintiff against the judgment and decree dated 29.10.2015 passed by the learned District Judge, Pathankot, vide which the appeal preferred against the judgment and decree dated 24.03.2015 passed by the learned Civil Judge (Sr. Division), Pathankot, has been allowed.

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

3. Plaintiff-appellant filed the suit for permanent injunction restraining the defendants-respondents from interfering into his peaceful possession over the land measuring 10-15 Marlas out of the land measuring 9 Kanal 17 Marlas comprised of Khasra no. 15R/18(2-18) and

19/1(7-17) situated in the revenue estate of village Sahowara Kalan.

4. A per the case of the appellant, originally Balkar Singh was owner in possession of the land in dispute. He died on 27.07.2009 leaving behind plaintiff-Arjun Singh, Santosh Kumar, Bhim Singh, Santokh Singh and Tarlok Raj as his Class I legal heirs. He also executed the Will dated 25.05.2009 in favour o the plaintiff and his other sons. After his death, the plaintiff and other legal heirs of Balkar Singh became the owner in possession of the entire land measuring 9 kanals 17 Marlas. The defendants are strangers to the suit land and they are threatening to dispossess the plaintiff and other legal heirs from the land measuring 10-15 Marlas, for which they have no legal right. Hence the suit for permanent injunction.

5. The defendants contested the suit on the grounds *inter alia* that defendant no.3 is in possession of the land shown by letters ABCD in red colour in the site plan attached with the written statement. Where the memorial of Baba Ali Shah Madar Zinda Peer has been established for the last more than 40 years. The defendant no.3 is in the established possession on that part of the suit property for the last more than 40 years. His possession is open, continuous and without any interruption. He has become owner by adverse possession. Plaintiff tried to take the forcible possession and also caused injuries on the person of defendant no. 4 for which a criminal complaint was filed. With these pleas, they pleaded for dismissal of the suit.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court on 20.08.2011:-

1. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP
2. Whether suit is not maintainable in the present form?OPD
3. Whether plaintiff has concealed the material facts?OPD
4. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit filed by the appellant-plaintiff.

8. Aggrieved with the judgment and decree dated 24.03.2015, defendants preferred the appeal and the same was allowed by the learned First Appellate Court, vide impugned judgment and decree dated 29.10.2015. Hence this Regular Second Appeal.

9. I have heard Mr. Arvind Kashyap, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contended that this fact is not disputed that the appellant is the owner of the land in dispute. He has referred to the copy of the jamabandi Ex.P-1 for the year 2008-2009, wherein Balkar Singh, the father of appellant has been recorded as owner in possession of the suit property. Same position has been repeated in the copy of the Khasra Girdawries. He contended that the aforesaid revenue documents and the evidence adduced by the plaintiff shows that he is owner in possession of the suit property. Thus, he is entitled for injunction.

11. I have duly considered the aforesaid contentions.

12. It is the settled principle of law that a person who is out of possession of the land in dispute is not entitled to injunction. In the

instant case, there are clear admissions on the part of the plaintiff himself and his witnesses about the existence of the memorial of Baba Ali Shah Madar Zinda Peer in the disputed property. Plaintiff-Arjun Singh while stepping into the witness box has admitted in the cross-examination that the Mazaar of Baba Ali Shah Madar Zinda Peer is there in the land in dispute. PW-2 Parshotam Lal has also admitted the existence of the memorial of Peer Baba in the land in dispute. PW-3 Sanjiv Singh has also admitted the existence of the Mazaar of Peer Baba in the land in dispute for the last 14-15 years. He further admitted that the structure is *pucca* one. From the aforesaid evidence, it is established that the Mazaar is in existence in the suit property for the last many years. PW-1 Darshan Singh has not even denied that the Mazaar is being looked after by defendant no.3. The admission in the statement of PW-1 corroborates the stand of the defendant-respondents that there exists a Mazaar in the suit property, which is being looked after by defendant no.3 Parshotam Lal. The plaintiff can never be considered to be in possession of the Mazaar of Peer Baba.

13. The decree passed by the learned trial Court is virtually based on the entries in the revenue record. There is no dispute with the proposition of law that the presumption attached to the entries of the jamabandies is rebuttable, which stands successfully rebutted from the admissions in the cross-examination of the plaintiff and his witnesses.

14. Moreover, it is settled principle of law that the equitable relief of injunction is only available to a person who comes to the Court with clean hands. From the evidence on record, it comes out that *pucca*

structure of the Mazaar is in existence in the suit land for the last more than 12 years. It must be to the knowledge and notice of the plaintiff, but he has deliberately suppressed and concealed all these facts from the Court at the time of filing the suit. Thus, even the conduct of the plaintiff itself dis-entitles him of the equitable relief of injunction.

15. Once, it is found that the plaintiff is out of possession, he cannot claim the relief of permanent injunction. The only efficacious remedy available to the petitioner was to seek the possession of the suit property by availing the appropriate legal remedy. To support this view reference can be made to case **Anuthula Sudhakar Vs. P. Buchi Reddy (Dead) by Lrs & Ors. 2008(2) R.C.R (Civil) 879.**

16. Thus, I have no reason to differ with the well reasoned findings recorded by the learned First Appellate Court which do not warrant any interference by this Court in the Regular Second Appeal.

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

March 01, 2016

s.khan

(DARSHAN SINGH)
JUDGE