

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

RSA No. 988 of 2016

Date of decision:04.05.2016

Piara Singh

...Appellant(s)

Versus

Jara Singh and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Arun Kumar Bakshi, Advocate,
for the appellant(s).

JITENDRA CHAUHAN, J.

1. Plaintiff-Piara Singh has filed this second appeal, having been non-suited by both the Courts below.

2. The case of the plaintiff is that he is owner in possession of the suit property consisting of three rooms and courtyard having a boundary wall. The suit property is having a main gate towards northern side and is measuring 1 Kanal 4 marlas 6 sarsahi and 14 square feet. On the northern and western sides of the suit property, there is rasta, on eastern side, there is another residential house of the plaintiff and on southern side, there is a '*haveli*' of the plaintiff. The suit property was purchased by the plaintiff from Tehsildar-cum-M.O,

Jalandhar, vide sale certificate dated 19.08.1967, in the open bid for a sale consideration of Rs. 300/- on 11.05.1967. The defendants claimed that they have obtained some property on lease adjacent to the suit property and defendants have claimed that a part of their property is included in the suit property. The possession of the plaintiff over the suit property is since 1967. Before filing the present suit, the defendants came to the suit property and threatened the plaintiff that they would demolish the boundary wall of the suit property and they would demolish the construction in the suit property illegally and forcibly, for which, they have no right to do so. Hence the suit.

3. The defendants contested the suit and submitted that the suit property is comprised in khasra No. 403 min and is owned by Punjab Wakf Board. Earlier, there was Government Primary School in the suit property and school was shifted about 4/5 years ago in the shamlat land of the village and thereafter, with the funds of the Sangat Darshan granted by the previous Government, the suit property was being used as Gym but for last about a year, suit property has been lying vacant. Defendant, Zora Singh had taken the suit property and other property of Wakf Board on lease vide lease deed dated 31.05.2007 and he came into possession of the suit property, which is adjoining the property of the plaintiff and to grab the suit property, the plaintiff broke the southern side wall of the suit property from the side of his haveli a few days ago and also broke the *varandah* which was in front of the rooms illegally and filed the suit by wrongly alleging that suit property is

owned and possessed by him and same was purchased by him by public auction.

4. After hearing the learned counsel for the parties and evaluating the material available on record, the learned trial Court held that the plaintiff has suppressed the material facts from the Court and his claim is liable to be turned down. The suit of the plaintiff was dismissed vide impugned judgment and decree dated 11.09.2013.

5. First appeal preferred by the plaintiff was dismissed by learned Additional District Judge, Jalandhar (for short 'the First Appellate Court') vide impugned judgment and decree dated 07.09.2015. Still aggrieved, the plaintiff has filed this second appeal.

6. The learned counsel for the appellant vehemently contended that the learned Courts below have wrongly observed that the plaintiff has failed to produce the Draftsman to prove the site plan, whereas, the site plan was signed by the plaintiff/appellant himself. There is no requirement of law to produce any Draftsman to prove the site plan. Both the Courts below further wrongly discarded the report of the Local Commissioner (Naib Tehsildar). No objection was ever raised by the defendant/respondent against the said report. Both the Courts below wrongly ignored the sale certificate Ex. P2 dated 19.08.1967 which is a Government document and presumption of correctness is attached to it under Section 90 of the Indian Evidence Act. Moreover, the sale certificate, being a public document, is *per se* admissible.

7.

Both the Courts below further wrongly observed that the

plaintiff-appellant has failed to produce the sale deed of his residential house purchased by his wife. The defendant/respondents have admitted in clear terms that the residential house is owned by the plaintiff-appellant.

8. It is further submitted that the appellant had filed an application for leading additional evidence which was not decided by the learned First Appellate Court, and as such, the case should be remanded back to the learned First Appellate Court directing the First Appellate Court to first decide the pending application for leading additional evidence.

9. I have heard the learned counsel for the appellant and perused the case file.

10. The plaintiff-appellant has asserted his ownership and possession over the property in dispute since 1967. But he has nowhere alleged the existence of school over the disputed property. While appearing in the witness box as PW-3, the plaintiff has admitted in most unambiguous words in his cross-examination that in the disputed property there was a Government Primary School. It is claimed by the appellant that he had given his land to the Gram Panchayat for running school but no resolution of the Panchayat is on the file to prove that the disputed property was ever given by the appellant to the Gram Panchayat for running a school. So, in the absence of any such proof, it cannot be said that the disputed property was ever in the ownership of the appellant or it was ever given to the

Gram Panchayat for running a school as claimed by the appellant. Appellant himself had stated that his residential house was of two kanals and it was purchased from some other person of the village and sale deed was in the name of his wife. He is residing with his wife, but he could not produce the sale deed in the Court. So, non-production of title deed of his residential house, compels the Court to presume that property which was purchased by the appellant from the Government vide Ex. P2 might be the property under his residential accommodation or the property under the '*haveli*' of appellant and not related to the disputed property. He has not produced the title deeds of the other properties just to avoid their connectivity with Ex. P2. Under the garb of Ex. P2, he wanted to grab the disputed property.

11. The sale certificate Ex. P2 would not be of any help to the plaintiff-appellant since, the plaintiff-appellant has failed to produce any title document to connect the properties with sale certificate Ex. P2. In the absence of any title document, both the Courts below have rightly held that non-production of the title deeds of adjoining properties of the appellant dis-entitles him to lay claim over the disputed property. Perusal of the sale certificate Ex. P2 shows that land measuring 1 Kanal 4 marlas 6 sarsahi and 14 square feet was sold to the appellant by the Government Department. But no boundaries of the properties have been mentioned in the sale certificate. In these circumstances, the plaintiff cannot take benefit of sale certificate Ex. P2, even though, it is more than 30 year old document.

12. The application for leading additional evidence filed by the appellant before the First Appellate Court seeking to produce on record certified copy of the sale certificate Ex. P2 alongwith original receipt of payment consideration as Ex. P3, is also liable to be dismissed. Even though, the first Appellate Court did not pass any order on the application filed by the appellant under Order 41 Rule 27 read with Section 151 CPC, yet it would not be just and fair to remand the case back for deciding the said application for the following reasons :-

- (i) The documents sought to be produced by way of additional evidence are neither necessary nor there was exercise of due diligence on the part of the appellant;
- (ii) The plaintiff-appellant has sought to produce concerned clerk from Rehabilitation Department and that of the record room DC Office, Jalandhar and alleged that he being a layman did not know the technicalities of law and acted as per the advice of the counsel in the trial Court. This plea of the plaintiff-appellant cannot be accepted as it would open a flood-gate and each person would plead ignorance of law, which is not permissible; and
- (iii) Moreover, the documents Ex. P2 and P3 have already been admitted into evidence and have been considered by this Court as well.

13. In this backdrop of the matter, the plaintiff-appellant cannot derive any benefit for not deciding of the application filed by him for leading additional evidence before the learned first Appellate

Court.

14. The next plank of argument of the learned counsel for the appellant with regard to admissibility of the report of the Local Commissioner, is also devoid of merits. Both the Courts below have rightly held that report of Local Commissioner, Ex. P6 is not correct as per the spot and cannot help the case of the appellant. According to this report, property in dispute is situated inside the *Lal Lakeer* and is not in Khasra No. 403. This report is against the Aks Shajra Ex. DY as well as against *jamabandi* Ex. DX. As per *jamabandi* Ex. DX, government school is situated in khasra No. 403/1 and this property is the ownership of Wakf Board and in possession of the Gram Panchayat. The Local Commissioner has shown the area of khasra No. 403 as khasra No. 403/1, 403/2 and 403/3 in green colour in site plan Ex. P7 i.e. 24 feet on one side, 20 feet on the other side, 22 feet on one side and 36 feet on fourth side. Similarly, in the other area is shown as 24 feet on one side, 31 feet on the other side, 10 feet on third side and 20 feet on the fourth side and if calculation is made, this area does not come to 2 kanals 13 marlas whereas area of khasra No. 403/1 min (0-10), 403/1 min (0-17), 403/3 min (0-7), 403/1 min (1-4) and 403/1 min (0-19) comes to 2 kanal 13 marlas.

15. There is concurrent finding of fact of both the Courts below to non-suit the plaintiff-appellant holding that the plaintiff is neither owner nor in possession of the disputed property. The said finding is fully justified by evidence on record and neither shown to be

perverse or illegal nor based on misreading or mis-appreciation of evidence. Consequently, the said finding does not call for interference in exercise of second appellate jurisdiction. No question of law much less substantial question of law arises for adjudication in this second appeal.

16. The appeal is merit-less and is, therefore, dismissed in limine.

04.05.2016
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(JITENDRA CHAUHAN)
JUDGE