

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
RSA No. 4154 of 2009 (O&M)
Decided on: 08.12.2017

Bakshish Singh

.....Appellant

versus

Mohinder Kaur and Ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Amarjit Markhan, Advocate
for the appellant.

Mr. B.R. Mahajan, Sr. Advocate with
Ms. Manpreet Ghuman, Advocate and
Mr. Prateek Mahajan, Advocate
for the respondents.

RAJBIR SEHRAWAT, JUDGE (ORAL)

CM-6616-C-2011

This is an application under order 41 Rule 27 CPC, for additional evidence.

Since there is no relevance of the order dated 08.01.2011 (Annexure-1), the CM is dismissed.

RSA No. 4154 of 2009

This is the second appeal filed by the plaintiff in the suit; challenging the judgment and decree passed by the lower Appellate Court, whereby the judgment and decree passed by the trial Court were upheld and the suit filed by the plaintiff, was ordered to be dismissed.

For convenience, the parties would be referred herein, as the plaintiff and defendants, as they were described in the original plaint.

The brief facts of the present case, as claimed by the plaintiff, are that the plaintiff was in possession of two plots No.390 and 391 situated at Indira Colony; Village Verka; Tehsil and Distt. Amritsar. It was pleaded that the plot No.390 and 391 were allotted by the Government to Malkiat

Singh and Jugraj Singh, being land-less labourers and belonging to the

weaker sections of the society. It was further claimed that after the allotment, the Government had issued a '*Sanad*' (certificate of allotment). The above said two plots have a combined area of 200 sq. yards. Still further, it was claimed that the above said, Malkiat Singh and Jugraj Singh sold the above said plots to the plaintiff vide an agreement dated 29.03.1999 for the sale consideration of Rs.3000/-. On the date of agreement, the entire sale consideration was paid, and the possession was taken by the plaintiff. However, on 05.09.2001 at about 11:00 a.m., the defendants along with 30/40 persons took the forcible possession of the suit property. The plaintiff informed the police authorities also. However, no action was taken by the police authorities. It was further claimed that the defendants further threatened the plaintiff that they will carry out the construction in the suit property. Consequently, the plaintiff filed a suit for possession.

On being put to notice, the defendants appeared and filed written statement taking routine preliminary objections. It was pleaded that the said Malkiat Singh and Jugraj Singh, the alleged vendors of the plaintiff; were never the owner of the suit property. They had no right, title or interest qua the property. It was further claimed that, in fact, the suit property is comprised in plots No.371,372, 373 and 374 and that these four plots were allotted to the defendant. The defendants have been in actual physical possession of these plots since the time of allotment and have raised construction of one room over the land, comprised in these plots, which the plaintiff has wrongly described, as plots No.390 and 391. It was further claimed that the defendant has grown more than 50 Popular trees in the vacant portion of these plots. Therefore, the prayer for dismissal of the suit was made.

Parties led their evidence.

After appreciating the evidence, the trial Court dismissed the

suit filed by the plaintiff. While, dismissing the suit, the trial Court recorded a find that the plaintiff had failed to prove his title in respect of the suit property. Therefore, he cannot claim the possession of the suit property, on the basis of the title. To support this conclusion, the trial Court has recorded that the plaintiff was claiming to have purchased the suit land from Malkiat Singh. However, no title document has been produced by the plaintiff. The agreement dated 29.03.1999, Ex.P1 cannot be taken as a document transferring the title, since it was not even registered. The trial Court further held that even the identity of the property, as described in the record, have not been connected to the suit property. Still further, the trial Court recorded that the plaintiff has not produced any site plan of the property in dispute. Hence, the trial Court held that the plots claimed by the plaintiff have not been connected to the suit property. Otherwise also, the trial Court held, that the plaintiff claims to have got title from Malkiat Singh and Jugraj Singh. However, he has failed to prove that even these alleged vendors had capacity to transfer the title in favour of the plaintiff. Accordingly, the suit was dismissed. Feeling aggrieved against this judgement and decree, the plaintiff filed the appeal before the lower Appellate Court.

However, the lower Appellate Court also dismissed the appeal filed by the plaintiff. While dismissing the appeal the lower Appellate Court held that the alleged plots No.390 and 391 are comprised in Khasra Nos.38/2/3, 9/1, 9/2, 10, 11, 12/1, 12/2, 19/1, 20, 21, 47/1, 2 and 9. The lower Appellate Court held, that no demarcation has been got done by the plaintiff to connect the suit property to the plots or to these khasra numbers. The lower Appellate Court also recorded that the original of the alleged allotment letter in favour of the vendors of plaintiff has also not been

namely, Malkiat Singh, when appeared as PW1; admitted that he has no proof to show that he was put in possession of the disputed property. Balraj Singh PW4 also admitted that the plaintiff is not in possession of the suit property at present. The plea of the plaintiff qua him having been in possession of the property, based on the plea that he had purchased certain material for raising construction over the suit property, was also rejected by the lower Appellate Court, by saying that although, the supplier of the material has deposed, as to supply of the construction material, however, none of them has proved the fact that this material was to be used for the construction over the suit property. Still further, the lower Appellate Court also held that, since the value of the property is more than Rs.100/-; therefore, the sale could not be effected except through a registered sale deed. Still further, the lower Appellate Court recorded that, otherwise also, the alleged transfer was in violation of the public policy.

The lower Appellate Court also dealt with the contention of the plaintiff, qua the suit being a suit under Section 6 of the Specific Relief Act. The lower Appellate Court recorded that although, the trial Court had observed that the suit was under Section 6 of the Specific Relief Act, however, the appellant/plaintiff stressed before the lower Appellate Court that, it was a regular suit for possession. Therefore, the lower Appellate Court dealt with the proposition, from both the angles, from the points of view of; the same being a regular suit and also, the same being a suit under Section 6 of the Specific Relief Act. The lower Appellate Court held that if it is treated, as a regular suit for possession, then the plaintiff has failed to prove his title over the suit property. Therefore, he cannot succeed. If it is treated a suit under Section 6 of the Specific Relief Act, then also, the plaintiff cannot succeed for the simple reason that he has failed to prove,

possession to the plot numbers claimed by him. Still further, the plaintiff had produced the official of the electricity department to show that the electricity connection is installed in the suit property in the name of the son of the plaintiff. However, even this fact does not help the case of the plaintiff. Therefore, the appeal was dismissed by the lower Appellate Court. Aggrieved against this judgment and decree, the present appeal has been filed by the plaintiff.

Arguing of the case for the appellant/plaintiff, learned counsel for the appellant has submitted that, the agreement in favour of the appellant has been duly proved by examining the vendor and the attesting witness. It is his submission that both these witnesses have duly deposed that the agreement was entered into between the parties and according to the terms of agreement, the possession was handed over to the plaintiff. The counsel further submitted that, since he has been in lawful possession over the suit property, therefore, the respondent could not have forcibly dispossessed him even by claiming any better title. His submission is that in that situation, the plaintiff is entitled to the benefit of Section 6 of the Specific Relief Act.

On the other hand, learned counsel for the respondents submitted that, since the plaintiff has filed the regular suit for possession, therefore, he was required to prove his title over the suit property. However, he has failed to prove his title by any means. It is further submitted by the learned counsel for the respondents that even if the suit is taken to be a suit under Section 6 of the Specific Relief Act, still, the plaintiff is bound to fail, since he has not led any evidence, to prove that he was dispossessed within a six month prior to filing of the suit. It is his further submission that the plaintiff has not been able to prove, at all, that

respondents further submitted that, in fact, the property belongs to the respondents/defendants, having been allotted to them by the Government only. Since then the, defendants are in actual physical possession of the same. Hence, prayed for dismissal of the present appeal.

Having heard the learned counsel for the parties and perusing the record with their able assistance, this Court is of the considered opinion that the submissions of the learned counsel for the appellant are not sustainable. The present suit is a suit for possession of the plots No.390 and 391, which is stated to be comprised in khasra numbers mentioned in the head note of the plaint. Hence, it is a suit for possession, based on title. The plaintiff himself appeared as witness in the suit. However, he has abjectly failed to prove the title. His claim is based only on the agreement dated 29.03.1999. However, even if taken to be proved, this agreement does not convey any title to the plaintiff, since the title to an immovable property worth more than Rs.100/- can be transferred only through a registered sale deed. It is not even the case of the plaintiff that any sale deed was ever got registered in his favour. Even the deed dated 29.03.1999 is only an agreement to sell. No suit for specific performance was ever filed by the appellant, to get the title through the decree of the Court. Hence, the plaintiff has failed to prove his title. Therefore, he cannot seek the possession of the property, on the basis of the title.

Next limb of the argument of the learned counsel for the appellant that his possession has to be restored, the same having been forcibly taken within six month prior to the date of filing of the suit, is also not made out from the facts of the case. Both the Courts below have held that the plaintiff has failed to connect the suit property to the plot numbers claimed to have been purchased by him. His claim was that he has installed

appearing, as a witness in the case, the plaintiff himself has admitted that his son is the owner of the adjoining plot only where this electric meter is installed. That means, he has not been able to connect the suit property even to the property claimed to be under possession of his son.

Still further, the plaintiff has failed to prove that his vendor also was ever put in possession of the suit property. Since the land is numbered land, therefore, it was incumbent upon the plaintiff to get the property demarcated to connect the suit property to the numbers claimed by him. However, no attempt was made by the plaintiff to connect the property to the numbers, as claimed by him. This shows that the defendants were right in submitting that the suit property is the property allotted to them by the Government.

No other argument is raised.

In view of the above, the present appeal fails and the same is dismissed being devoid of any merits.

8th December, 2017

Manju

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No