

101.

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

RSA-3990-2012 (O&M)

Date of decision:07.04.2017

SHIVRAJ SINGH

... Appellant

versus

GURDEV KAUR AND ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Harvinder Singh Mann, Advocate,
for Mr. Viranjeet Singh Mahal, Advocate,
for the appellant.

Mr. M.S. Uppal, Advocate,
for the respondents.

HARI PAL VERMA, J. (Oral)

The appellant-defendant No.1 has filed the present Regular Second Appeal against the judgment and decree dated 04.04.2012 passed by the learned Additional District Judge (Fast Track Court), Bathinda, whereby his appeal against the judgment and decree dated 23.01.2010 passed by the learned Civil Judge (Junior Division), Talwandi Sabo, was dismissed.

Briefly stated, as per plaint, originally late Santa Singh- father of the plaintiffs, was exclusive owner in possession of suit property, which was purchased by him vide sale deed dated 27.12.1982, and after his death, the plaintiffs inherited the suit property

being his legal heirs. Mutation was also sanctioned in their favour and

since then, they are in peaceful and physical possession of the suit property being owners. The plaintiffs have filed the suit for restraining the defendants from interfering in peaceful possession of the plaintiffs over the suit property. Since the defendants, who have no concern with the suit property, are disturbing the plaintiffs' peaceful possession, hence, the suit was filed.

The appellants-defendants have filed their reply, raising the issue of maintainability of the suit, locus-standi and cause of action. Plaintiffs have filed a wrong site plan of defendant No.1 and are misleading the court. Defendant No.1 purchased the suit plot from one Surjit Singh vide sale deed No.3716, dated 14.03.2007, who was in physical possession of the plot and mutation was sanctioned in favour of defendant No.1 and thus in possession of plot.

The trial Court, vide judgment and decree dated 23.01.2010 decreed the suit of the plaintiffs, restraining the defendants from interfering in the peaceful possession of the plaintiffs.

Feeling aggrieved against the aforesaid judgment and decree dated 23.01.2010 of the trial Court, only defendant No.1-Shiv Raj Singh filed an appeal before the Lower Appellate Court as the suit against defendant No.2 was withdrawn by the plaintiffs before the trial Court. The Lower Appellate Court, vide judgment and decree dated 04.04.2012 dismissed the appeal of defendant No.1.

It is in the aforesaid circumstances, the appellant-defendant No.1-Shivraj Singh has filed the present Regular Second Appeal.

Learned counsel for the appellant-defendant No.1 has argued that he has no objection so far as the finding recorded on issue No.1 is concerned. However, the plaintiffs had not proved the site plan as per the possession of the parties existing on the spot.

On the other hand, learned counsel for the respondents-plaintiffs has argued that the plaintiffs had filed suit for permanent injunction only qua the property i.e. Khasra Nos.305//12/2 (0-6) and 13/4(0-14). In this manner, the plaintiffs are in exclusive possession of the land measuring 1 kanal 0 marla over the property detailed in the plaint.

I have heard learned counsel for the parties.

The courts below have recorded concurrent finding on fact that the plaintiffs are in exclusive possession of land measuring 1 kanal 0 marla. Even the appellant-defendant No.1 has made a categorical statement that he has no concern so far as the suit property is concerned. Para 19 of the Lower Appellate Court reads as under:-

“19. On the appraisal of the entire evidence on record, it is proved that previously Santa Singh, father of plaintiffs was in possession of the suit property purchased by him vide sale deed dated 27.12.1982 and after his death, plaintiffs are in exclusive possession over the same and their possession over the suit property has been admitted by the defendant as he has categorically mentioned that he has no concern with the suit property. Though defendant No.1 has also purchased the property measuring 0 Kanal 12 Marlas vide sale deed dated

14.3.2007. But he is not in exclusive possession over the said property. Ld. Trial Court has rightly held that there is no question of defendant coming in exclusive possession of land 0 Kanal 12 Marla as alleged by him and defendant No.1 can get the demarcation and get his share separated by filing partition proceedings in the competent court of law. Since the plaintiffs are in exclusive possession over the suit property, so the Ld. Trial Court has rightly held that defendant No.1 has no right to interfere in his peaceful possession over the property and site plan of the property is correct. So, findings of Ld. Trial Court on issue No.1 are based on correct appreciation of evidence on record and the same are affirmed.”

No substantial question of law arises in the present regular second appeal.

In view of above, this Court does not find any reason to interfere in the present regular second appeal which is based on concurrent findings of facts. Accordingly, the present Regular Second Appeal is dismissed.

(HARI PAL VERMA)
JUDGE

07.04.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No