

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

**RSA No.1437 of 2013 (O&M)**

**Date of decision: 04.07.2017**

**Inderjit Singh (since deceased) through L.Rs. and others**

**..Appellants**

**Versus**

**Gurinderpal Singh and others**

**..Respondents**

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

**Present:** Mr. Vaibhav Sehgal, Advocate  
for the appellants.

Mr. Sunil Chadha, Sr. Advocate with  
Mr. Amanbir Singh Pahwa, Advocate  
for respondent No.1.

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**Daya Chaudhary, J.**

Plaintiff-respondent No.1, namely, Gurinderpal Singh, filed a suit for grant of decree of declaration, mandatory injunction as well as permanent injunction before the Civil Judge (Junior Division), Ludhiana. As per case of the plaintiff, his parents migrated from Pakistan after 1947 and defendants No.3 to 5 are his brothers and sisters. One brother, namely, Bhupinderpal Singh, was presumed to have died. In lieu of holdings in Pakistan, the Ministry of Rehabilitation (Government of India) to compensate the parents of the plaintiff allotted the property measuring 308 square yards in Municipal area of Ludhiana where father of plaintiff constructed a house. It is also averred in the plaint that soon after the allotment of the land, father of plaintiff and defendants No.3 to 5 expired on 07.08.1964. A conveyance deed was executed between the President of

India and mother of plaintiff, plaintiff and defendants No.3 to 5 and Bhupinderpal Singh on 10.02.1969, which was registered in the office of Sub-Registrar, Ludhiana on 04.06.1969 vide Vasika No.1403 dated 17.06.1969. It has also been averred in the plaint that defendant No.2-Assa Singh along with Hira Singh, Sant Singh and Harcharan Singh, who are maternal uncles of the plaintiff and defendants No.3 to 5 also migrated from Pakistan and in order to accommodate her brothers, mother of the plaintiff permitted them to reside along with their families in the said property. The mother of plaintiff died on 29.05.1984. Maternal uncle Hira Singh died issueless on 16.08.1997 and another maternal uncle, namely, Sant Singh also expired, who was not survived by any LR whereas maternal uncle Harcharan Singh died leaving behind defendant No.1 being his LR. Only Assa Singh maternal uncle of plaintiff is still alive and has constructed his house in New Janta Nagar, Ludhiana.

As per claim in the suit, the maternal uncles were not having right and title in the property and their possession over the green portion was merely permissive. It is also mentioned that out of property measuring 308 square yards, plaintiff had sold property measuring 120 square yards in the year 1988 and 34 square yards in the month of March, 1996 and he was in possession of property measuring 77 square yards. Rajinder Kaur daughter of Assa Singh was employed in Municipal Corporation, who in connivance with other authorities of Municipal Corporation, got incorporated names of Hira Singh, Sant Singh, Assa Singh and Harcharan Singh in the house tax register being maintained by Municipal Corporation, Ludhiana. The plaintiff claimed that electric connection was there in the

name of his father. During pendency of the suit, defendants have taken forcible possession of the part of the suit property though they were having no right, title or interest in the property on the basis of wrong entries made in the record of Municipal Corporation.

After issuing notice in the suit, defendants No.1 and 2 contested the suit by filing written statement and certain preliminary objections regarding maintainability of the suit, question of limitation and having no cause of action to file the suit were raised. It was also stated in the written statement that the plaintiff has suppressed the material facts from the Court and suit was bad for misjoinder of the parties. The suit was allowed and it was decreed in favour of the plaintiff vide judgment and decree dated 14.06.2011.

Said judgment and decree dated 14.06.2011 passed by the trial Court was challenged by defendants-appellants by way of filing appeal before learned Additional District Judge, Ludhiana, which was dismissed vide judgment and decree dated 06.12.2012.

Appellants-defendants have filed the present regular second appeal to challenge judgment and decree dated 14.06.2011 passed by the trial Court as well as judgment and decree dated 06.12.2012 passed by the Lower Appellate Court.

Learned counsel for the appellants submits that both the Courts below have not appreciated the evidence available on record as there was sufficient evidence to prove that Surjit Kaur (mother of plaintiff) sold half share of the property to her brothers and separate municipal number was allotted. Learned counsel further submits that both the Courts below have

gravely erred in not recognizing the basic principle of law that family settlement was there between the parties but the same has not been considered. Learned counsel for the appellants has also relied upon judgment rendered by Hon'ble the Apex Court in ***Union of India and others vs. Vasavi Co-op. Housing Society Ltd. and others***, 2014(2) RCR (Civil) 76, ***State of Punjab and others vs. Gurdev Singh and Ashok Kumar***, AIR 1992 Supreme Court 111; judgments rendered by this Court in ***Hira Nand vs. Savita Rani***, 1987 Recent Revenue Reports 466, ***Om Parkash & ors. vs. Umed Singh & ors.***, 2010(3) Law Herald (P&H) 2034, ***Sunder Lal vs. Sita Bali***, 2003(3) RCR (Civil) 243, ***Roshan Lal vs. Union Territory of Chandigarh***, 1998(4) RCR (Civil) 98, ***Bakhtawar & Anr. vs. Ram Partap & Ors.***, 2015(5) Law Herald (P&H) 4571, ***Anil Malhotra vs. Dr. Chander Malhotra & Ors.***, 2015(4) Law Herald (P&H) 2927, ***Jai Ram vs. Mukh Ram***, 2012 (34) RCR (Civil) 879; judgment rendered by the Delhi High Court in ***Kamla Bajaj vs. Rakesh Bansawal & ors.***, 2010 (172) DLT 44; judgments rendered by the Nagpur High Court in ***Karselal and another vs. Badriprasad***, AIR 1922 Nagpur 162, ***Rahimbax vs. Samsu and others***, AIR (38) 1951 Nagpur 215; judgment rendered by the Madras High Court in ***Chinnan and others vs. Ranjithammal***, AIR 1931 Madras 216 and judgment rendered by the Karnataka High Court in ***Mangalore Municipal Market Welfare Society and another vs. The Corporation of the City of Mangalore and others***, AIR 1993 Karnataka 220 in support of his contentions.

Learned counsel for respondent No.1 submits that the judgments passed by both the Courts below are well-reasoned and detailed

findings have been recorded. The suit cannot be time barred as it was filed within the period of limitation from the date of knowledge i.e., when the plaintiff came to know about separate municipal number, which was being allotted.

Heard arguments of learned counsel for the appellants as well as counsel for respondent No.1 and have also perused the impugned judgments and decrees passed by the trial Court as well as the lower Appellate Court and also the statements of the parties.

Undisputedly, the father of the plaintiff and defendants No.3 to 5, namely, Hari Singh migrated from Pakistan to India and the land measuring 308 square yards was allotted by the Ministry of Rehabilitation in lieu of the property, which was left by the father of the plaintiff. Father of plaintiff died on 07.08.1964. It is also not disputed that after death of Hari Singh, a conveyance deed was executed on 10.02.1969 in favour of mother of plaintiff, plaintiff and defendants No.3 to 5 and Bhupinderpal Singh, which was duly registered with the office of Sub-Registrar, Ludhiana on 04.06.1969. Thereafter, mother of plaintiff died on 29.05.1984. Out of total land measuring 308 square yards, plaintiff-respondent No.1 sold property measuring 120 square yards and thereafter, another piece of land measuring 34 square yards was also sold. Accordingly, plaintiff and defendants No.3 to 5 were left with 154 square yards of land, Out of which, land measuring 77 square yards was in possession of plaintiff-respondent No.1 and defendants No.3 to 5 but the land measuring 77 square yards was in illegal possession of defendants No.1 and 2.

The trial Court framed following issues: -

1. Whether the plaintiff is entitled for declaration as prayed for?OPP
2. Whether the plaintiff is entitled for mandatory injunction as prayed for?OPP
3. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP
4. Whether the suit is not maintainable?OPD
5. Whether the plaintiff has no locus standi to file the present suit?OPD
6. Whether the suit is within limitation?OPD
7. Whether the plaintiff has no cause of action to file the present suit?OPD
8. Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD
9. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction?OPD
10. Whether the plaintiff is estopped by his act and conduct?OPD
11. Relief.

The finding recorded by the trial Court is reproduced as under:-

*“26. Onus to prove these issues was upon the defendants no.1 and 2 but neither any evidence was led by the defendant No.1 and 2 to prove these issues nor learned counsel for the defendants no. 1 and 2 addressed the arguments on these issues. Hence, these issues are decided in favour of the plaintiff and against the defendants no.1 and 2.”*

Similarly, the finding recorded by the Lower Appellate Court is reproduced as under: -

*“33. In this back drop, the fact that the predecessors*

*in interest of appellants came into possession of the property in dispute with the permission of Surjit Kaur stands established as also the fact that the said property is a part of the property allotted to Surjit Kaur vide Ex.PW5/A on her migration from Pakistan to India. The entry in the assessment register reflecting the suit property to be bearing a separate No.596/1 and to be the ownership of Hira Singh, Assa Singh, Paramjit Singh, Inderjit Singh appears to have been the handy work of Rajinder Kaur d/o Assa Singh, defendant no.2, who had been working with Municipal Corporation, Ludhiana since the year 1981-82 and was in a position to get the record tampered with. It is, settled proposition of law that the entry in the assessment register of Municipal Corporation is neither proof of title nor the same can be a substitute for document of title.*

*34. At this stage, brief reference to the submission of learned counsel for the appellants about the appellants being in peaceful possession of the suit property and plaintiff/respondent no.1 being not in possession of any portion of the suit property needs to be adverted to. Even if for the sake of arguments, plaintiff is not considered to be in possession of any portion of suit property, the fact remains that having succeeded to the property allotted to Surjit Kaur, plaintiff, as a co-sharer, is well within his right to seek possession of a portion of the said property which is in permissive possession of the appellants.*

*35. Otherwise also, it has come up in the statement of Jagannath PW3 that previously plaintiff and defendant no.1 were in possession of the suit property and some time back defendants had taken*

*forcible possession of the portion in possession of plaintiff. The fact that this witness has stated in his cross-examination that he had not gone towards the property in dispute for the last 10-12 years, and had seen plaintiff in possession of the same about twelve years back would again fortify the claim of the plaintiff that after the death of his mother he became co-owner of the suit property and came in possession of the same.*

*36. The learned lower Court while taking up issue nos. 1 to 5 took into consideration all the relevant facts concerning the dispute of the parties, as also the fact that defendants nos.1 & 2 had failed to prove as to how they came into possession of the suit property. In fact, defendants/appellants failed to show the status of their possession over the suit property and for all intents and purposes the possession of appellants is deemed to be permissive possession. The suit filed by plaintiff therefore, on the basis of title, seeking possession of the suit property has rightly been held to be maintainable by learned lower Court and plaintiff has locus standi to file the present suit. There is no infirmity in the findings recorded by learned lower Court on issue nos.1 to 5 whereby plaintiff along with defendant nos.1 to 5 and Bhupinder Pal Singh has been declared to be owner of property No.B-XII-596/1, Field Ganj, Kucha No.8, Ludhiana and has been held entitled to decree of possession of the suit property i.e. the green portion in which defendants/appellants are in permissive possession and red portion of which defendants are alleged to have taken forcible possession.”*

On perusal of findings recorded by both the Courts below and also the evidence available on record, it has been proved on record by the plaintiff that he is owner in possession of the property in dispute as per conveyance deed Ex.PW5/A and defendants have failed to produce any document to prove as to how they came into possession of the suit property. Onus was upon the plaintiff to prove his right over the property. As per case of the plaintiff, he came to know about the wrong entries made in the Municipal Corporation record subsequently and immediately filed the suit on 02.09.1997. It cannot be said that the suit was not filed within the period of limitation as the limitation is to be counted from the date of knowledge. Although defendant No.1 while appearing as DW1 deposed regarding his peaceful and continuous possession over the suit property but he did not place on record any document to show his ownership over the land in dispute and also with regard to transfer of property. Defendants No.1 and 2 have only placed on record copy of TS-1 register qua assessment of house tax reflecting their names as they have claimed possession over the property on the basis of that entry made in the house tax register. However, the entry in the house tax register does not confer any title. On the basis of said entry made in the house tax register, no relief of declaration can be claimed. The plaintiff has proved on record the conveyance deed Ex.PW5/A. However, defendants have placed on record an agreement dated 11.05.1985 executed inter-se but plaintiff was not a party to that agreement and it does not confer any title over the property in dispute. On the basis of evidence available on record and even in the arguments raised by learned counsel for the defendants, it has not been proved on record as to how and in which

manner, they came into possession of the suit property. Even defendants No.1 and 2 have miserably failed to prove that they purchased any piece of land from the mother of plaintiff-respondent No.1.

Accordingly, no interference is required with the findings recorded by both the Courts below and as such, the appeal being devoid of any merit, is hereby, dismissed.

04.07.2017  
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(DAYA CHAUDHARY)  
JUDGE

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|---------------------------|-------------|
| Whether speaking/reasoned | ✓<br>Yes/No |
| Whether Reportable        | ✓<br>Yes/No |