

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

R.S.A. No.2829 of 2016 (O&M)

Date of Decision: August 02, 2017

Bhagwant Singh

... Appellant

Versus

Manjit Singh and others

... Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. A.P. Kaushal, Advocate
for the appellant.

RITU BAHRI, J.

The appellant-defendant has come up in regular second appeal against the judgment of trial Court dated 28.04.2015 and lower Appellate Court dated 05.02.2016, whereby the suit for declaration and permanent injunction has been decreed by both the Courts below.

The respondents/plaintiffs have filed a suit stating therein that plaintiff Nos.1 and 4 are sons of Gulzar Singh and plaintiff No.2 is his daughter-in-law (wife of deceased son) and defendant No.3 is grandson of Gulzar Singh. Gulzar Singh was in exclusive possession of the suit land. The boundary wall was constructed around the suit land by installing a gate, which has been used for cattle shed. Gulzar Singh had filed a suit for permanent injunction against Gurchran Singh and others,

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which was decreed vide judgment and decree dated 17.11.1997 (Annexures P-2 and P-3) and the appeal against this judgment appeal was filed which was also dismissed vide judgment and decree (Annexures P-4 and P-5). After the decree of the suit, the defendant is claiming himself to be in possession of the plot which is lying vacant by raising construction thereon. Hence, this suit has been filed.

The defendant filed his written statement. On merits, it has been submitted that Gulzar Singh father of the plaintiff has no right over the plot in question and took the plea that the in the suit filed by the father of the plaintiff, the defendant was not the party. The plaintiffs are residing at Patiala along with their father for the last 19 years. Gulzar Singh had sold his residential house to Mahinder Singh for a sum of Rs.50,000/- and 2 Biswas of land to the defendant before leaving Sangrur. Plaintiffs are not holding any ration card or voter card of Village Kalajhar. Defendant is in possession of the plot in question for the last 25 years. The plaintiffs have installed boundary wall around the plot in question by installing gate. A compromise was effected between the parties at Police Post Kalajhar on 15.01.2011 qua the plot in question vide which possession of the defendant over the plot in question was admitted by the plaintiffs.

4. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiffs are entitled to the relief of declaration as prayed for? OPP.
2. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP.

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3. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
4. Whether the plaintiffs have got no cause of action and locus standi to file the present suit?OPD.
5. Whether the plaintiffs have concealed the material facts from the Court/OPD.
6. Relief.

Issue Nos.1 and 2 were taken up together. The trial Court has taken into account the judgment and decree dated 17.11.1997 (P-2 and P-3) on one side and on other side case of the defendant was examined on account of registration of DDR dated 15.01.2011 (Ex.D1). As per DDR, the police authorities had made an effort to reconcile the dispute arisen between the parties. Defendant Bhagwnt Singh is the brother of Gulzar Singh and both are sons of Maingal Singh. It is further observed that in the DDR (Ex.D1), there is no writing of the compromise mentioned in Ex.D1. An FIR No.149 dated 17.07.2014 at Police Station Bhawanigarh under Sections 447, 324, 323, 148 and 149 IPC has been registered against various persons including the defendant on the complaint of plaintiff. In the absence of any compromise, the trial Court gave finding in favour of the plaintiff that no written compromise was placed on record by the defendant.

As per site plan Ex.P1, Bhagwant Singh was not having any property adjoining to the plot in question. No writing in this respect has been taken by the defendant from Gulzar Singh nor any witness has been examined by the defendant in whose presence he has purchased the property in question. Defendant examined DW-3 Jagroop Singh

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Lamberdar, who in his cross-examination has submitted that on one side of the property in question, there is property of Harbans Singh whereas on the other side, there is property of Bhgwant Singh. Its effect is not evident from the site plan. In the absence of any written compromise, the case set up by the defendant that the plaintiffs have admitted their possession in the compromise, but no compromise has been placed on record by the defendant. In view of the judgment and decree (P3 nd P-4), the possession of the property remained with Gulzar Singh and the same was inherited by the plaintiffs after his death. After the death of Gulzar Singh, relief of declaration under Section 34 of the Specific Relief Act was not given and keeping in view the judgment and decree (P-4 and P-5), the plaintiffs have established their possession and defendant is restrained from dispossessing the plaintiffs from the suit property.

The lower Appellate Court on appeal in paragraph 13 has affirmed the findings of the trial Court and held that the trial Court has right declined the relief of declaration, but since the possession of the predecessor-in-interest Gulzar Singh has been established, issue No.2 was decided in their favour by giving injunction restraining the defendant from interfering in the possession of the plaintiffs.

Learned counsel for the appellant/defendant has vehemently argued that respondents/plaintiffs have not been able to show any evidence which had led to show that he was actually in possession, when the DDR (Ex.D1) got registered. Mere mentioning of the compromise in the DDR would not be taken into consideration as admission of the

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plaintiffs that appellant-defendant was in possession because there is no written compromise having signatures of the parties.

Accordingly, the concurrent findings of facts recorded by both the Courts below do not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

[RITU BAHRI]
JUDGE

August 02, 2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No