

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

**RSA No. 3531 of 2016 (O & M)  
Date of Decision:-02.03.2017**

Nawab Khan

...Appellant

Versus

Manjit Singh and another

...Respondents

**CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA**

Present:- Mr. Rahul Sharma, Advocate  
for the appellant.

**HARI PAL VERMA J.**

**C.M. No.9253-C of 2016**

Prayer in this application filed under Section 151 CPC is for  
condonation of delay of 40 days in re-filing the appeal.

For the reasons mentioned in the application, same is allowed  
and the delay of 40 days in re-filing the appeal is condoned.

**RSA No.3531 of 2016**

The appellant/defendant (hereinafter called 'the defendant') has  
filed the present regular second appeal against the judgment and decree  
dated 15.10.2015 passed by learned Additional District Judge, Ludhiana,

whereby his appeal against the judgment and decree dated 09.5.2014 passed by learned Additional Civil Judge (Senior Division), Payal was dismissed.

Vide judgment dated 09.5.2014, the Civil Court has decreed the suit filed by the respondents/plaintiffs (hereinafter called 'the plaintiffs') and restrained the defendant from interfering in the peaceful possession of the plaintiffs over the suit property, except in due course of law.

Briefly stated the plaintiffs have filed a suit for permanent injunction restraining the defendant from dispossessing the plaintiffs from the suit land as detailed in the plaint. As per plaint, the suit land as entered in the jamabandi for the year 2000-2001 was owned by Sarkar Daulat Madar and Nazul Land. Plaintiff No.2 Amar Singh was in actual physical cultivating possession of the land in dispute since the year 1963. Previously, one Gulam Mohammad son of Shehzada was in possession of the suit land, who sold the entire rights to the plaintiffs for a sale consideration of Rs.1500/- vide registered sale deed dated 13.11.1963. Plaintiff No.2-Amar Singh was in possession of the land in dispute from the date of its purchase and this fact is clearly born out from the jamabandi and khasra girdawri. Plaintiff No.1-Manjit Singh purchased the rights of land in dispute vide agreement to sell dated 9.6.2006 and Rs.22 lacs were paid. Possession of the land was delivered by plaintiff No.2-Amar Singh to plaintiff No.1-Manjit Singh, who is in cultivating possession. But the defendant had threatened to take forcible possession of the land in dispute, necessitating filing of the suit.

Defendant had filed the written statement taking preliminary

objections regarding maintainability of the suit, plaintiffs have not approached the Courts with clean hands, there is collusion between the plaintiffs and they have an evil eye on the suit property which was in exclusive possession of the defendant, who was cultivating and using the suit property for his own use and occupation. Since the value of the property had increased, the plaintiffs hatched a conspiracy with each other and dispossessed him (defendant) forcibly and illegally on 12.12.2006 without adopting the due course of law despite there being a status quo order dated 28.11.2016. Since the plaintiffs along with six other unknown persons succeeded in dispossessing the defendant by using force and had destroyed the seasonal crops, the matter was reported to the police and an FIR No.347 dated 13.12.2006 under Sections 447, 341, 323, 427 read with Sections 148 and 149 IPC was registered. Defendant had admitted that previously Gulam Mohammad son of Shehzada was in possession of the suit land, but the rights regarding purchase of property from Gulam Mohammad vide registered sale deed dated 13.11.1963 for a consideration of Rs.1500/-, were denied. It was denied that plaintiff No.2-Amar Singh was in actual physical and cultivating possession of the suit land. It was also denied that Gulam Mohammad ever delivered the possession of the suit land to the plaintiffs.

From the pleadings of the parties, the trial Court vide order dated 6.3.2007 framed the following issues :-

- “1. Whether the plaintiffs are entitled the relief of permanent injunction as prayed for ? OPP
2. Whether suit is not maintainable ? OPD

3. Whether the plaintiffs have not come to the Court with clean hands, if so what effect ? OPD
4. Whether the plaintiffs have no cause of action to file the present suit ? OPD
5. Relief.”

The trial Court vide judgment dated 09.5.2014 had decreed the suit and held that the plaintiffs were in possession over the suit land. Para 13 of the judgment of the trial Court, which is relevant to establish the possession of the plaintiffs, read as under :-

“13. In order to prove the claim of possession over the suit property, the plaintiffs have relied upon one sale deed dated 13.11.1963 vide which possessory rights were sold by Gulam Mohammad to plaintiff Amar Singh for consideration of Rs.1500/-. The rights of Gulam Mohammad are duly established from the entire revenue record relied upon by the plaintiffs. It is specifically provided under the column of cultivation that Gulam Mohammad was occupying the suit property being Mujara Awal and plaintiff Amar Singh has been shown as Mujara Doam, meaning thereby that Gulam Mohammad was in possession over the property in dispute in the year 1963 when he executed document dated 13.11.1963. It also transpires from agreement, which was executed on 9.6.2006 that Amar Singh further transferred his possessory rights to plaintiff Manjit Singh. It is also pleaded by defendant in his writtens statement that plaintiffs forcibly took possession of the suit land from him on 12.12.2006. No evidence has come on the part of defendant that to recover the possession, he had filed any suit against the plaintiffs. It is not in dispute as per

Section 6 of Specific Relief Act, if a persons is dispossessed from the suit property forcibly, he has remedy to file suit for possession within 6 months from the date of dispossession. Even no counter claim has been filed by the defendant, if the possession was taken from him on 12.12.2006, whereas written statement in this case was filed by the defendant on 7.2.2007. So far as the claim of defendant on the basis of registration of an FIR is concerned, the same is also not tenable in view of the reason that during investigation, it was found by the Investigating Agency that the possession of defendant was not upon the suit property. Thereafter, the case was recommended for cancellation of FIR by the concerned police station. The defendant has not brought any evidence on the record that in which capacity he is claiming his possession over the suit property. Although the possession of plaintiff over the suit property as per the documents relied upon by him also rank trespasser because the suit property in dispute is standing in the name of government and no steps has still been taken by the government to recover the possession from the concerned persons but the case of plaintiff is standing on bettering footing then the case of defendant. Furthermore, the defendant admitted in his cross-examination that he had not moved any application to the concerned authorities for entering khasra girdawri in his name, when he admitted that his grandfather Gulam Mohammad expired in the year 1968.No steps against the deed dated 13.11.1963 were taken by Gulam Mohammad. If the defendant was in possession over the suit property, then it was incumbent upon his part to go

through the revenue record in order to ascertain, whether the revenue record on the basis of possession is running in his name or not. In this regard entire evidence of defendant is silent. As the case of the plaintiffs is on better footing, then the defendant and as such the plaintiffs are certainly entitled the relief for injunction to protect the possession over the suit property. Accordingly, this issue is decided in favour of the plaintiffs and against the defendant.”

Aggrieved against the judgment and decree dated 09.5.2014 the appellant/defendant filed an appeal and the same was also dismissed by learned Additional District Judge, Ludhiana vide judgment and decree dated 15.10.2015 with the following observation :-

“15. Appellant rather has not been able to produce any document from where his actual possession over the suit property could be reflected. Except the bald assertion in this regard when he is alleging that he was forcibly dispossessed on 12.12.2006 by the respondents. However, once the actual possession of the appellant either on 12.12.2006 or at any point of time prior to this itself is not established, then question of dispossessing of the appellant does not arise. That is the reason that no action on the basis of FIR got registered by the appellant was initiated. Rather cancellation report (Mark-A) was recommended. As actual possession over the suit property of respondent no.1/Manjit Singh stand established over the suit property, therefore, rightly the suit has been decreed to restrain the appellant from interfering forcibly and illegally without due course of law in the suit property in the possession of the plaintiff

no.1. Filing of the FIR by the appellant, without any basis, goes on to show that appellant one way or the other was bent upon to interfere in the suit property. As such apprehension of the plaintiffs was found to be real and the suit of the plaintiffs when they received these threats of their dispossession in the hands of appellant, for permanent injunction rightly has been held to be maintainable.”

It is in the aforesaid circumstances, the present appellant/defendant has filed the present regular second appeal formulating the following substantial questions of law :-

- “ i) Whether the impugned judgment and decree of Courts below are result of misreading and mis-appreciation of law and evidence ?
- ii) Whether a person can transfer the possessory rights of the land owned by the government and can sell to any other person without the consent of the government ?
- iii) Whether the judgment and decree of Courts below are erroneous, perverse and not sustainable in the eyes of law ?”

Learned counsel for the appellant has argued that both the Courts below have acted perversely and in an illegal manner, contrary to the evidence on record. The Courts have not taken into consideration the fact that the appellant/defendant was in exclusive cultivating possession of the suit land, who was using the property for his own use and occupation after the death of Gulam Mohammad son of Shehzada, who was grandfather of the appellant. Since the respondents/plaintiffs succeeded in dispossessing the appellant/defendant by use of force and had destroyed the seasonal

crops grown by the appellant, the matter was reported to the police. Hence FIR was got registered. Thus, it is sufficient to establish that the appellant was in possession of the suit land. In fact the land in question was in exclusive possession of the Government of Punjab and Gulam Mohammad was not competent to sell the possessory rights to plaintiff Amar Singh without the consent of the Government. Therefore, the sale deeds produced by the respondents/plaintiffs are illegal.

I have heard learned counsel for the appellant.

The appellant has claimed that he was in exclusive possession of the suit property and was cultivating and using the property for his own use and occupation. It is only because the value of the property had increased, the respondents/plaintiffs had hatched a conspiracy with each other and dispossessed the appellant-defendant forcibly and in an illegal manner with the help of six other unknown persons without adopting the due course of law on 12.12.2006, despite there being a status quo order dated 28.11.2006 passed by the Civil Court. While dispossessing the appellant/defendant, the plaintiffs along with other six unknown persons had also destroyed the seasonal crop of the appellant/defendant. The matter was reported to the police.

In order to prove the claim of possession over the suit property, the plaintiffs have relied upon sale deed dated 13.11.1963, vide which possessory rights were sold by Gulam Mohammad to plaintiff Amar Singh for a consideration of Rs.1500/-. In the revenue record, rights of Gulam Mohammad are established by the plaintiffs and in column of cultivation

said Gulam Mohammad was occupying the suit property being Mujara Awal whereas plaintiff Amar Singh has been shown as Mujara Doam, which mean that Gulam Mohammad had possession over the suit property in the year 1963 when he executed the document dated 13.11.1963. Vide agreement dated 9.6.2006 plaintiff No.2 Amar Singh had further transferred the possessory rights in favour of plaintiff No.1-Manjit Singh, who took possession of the suit land on 12.12.2006. The defendant has failed to show that in order to recover possession he had filed any suit against the respondents/plaintiffs. As provided under Section 6 of the Specific Relief Act, if a person is dispossessed from the suit property forcibly, he has the remedy to file a suit for possession within six months from the date of dispossession. But the defendant has not availed any remedy including filing of counter claim. As regard registration of FIR regarding dispossession of the defendant is concerned, the police has already concluded the investigation and during the course of investigation, it was established by the investigating agency that the possession of the defendant over the suit land was not established and accordingly the police had recommended cancellation of the FIR against the plaintiffs. The defendant has not been able to adduce any evidence on record that in what capacity he is claiming ownership over the suit land.

This Court finds that there is no illegality in the judgments and decrees passed by the Courts below. It being a case of concurrent finding of facts recorded by the Courts below, no interference is warranted.

No substantial question of law is involved in the present

regular second appeal. Therefore, the impugned judgments and decrees passed by the Courts below are upheld and the present regular second appeal is dismissed.

March 02, 2017  
Vijay Asija

( HARI PAL VERMA )  
JUDGE

Whether speaking/reasoned  
Whether Reportable

Yes / No  
Yes / No