

RSA No. 4530 of 2016 (O&M)

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

**RSA No. 4530 of 2016 (O&M)
Date of Decision: 7.3.2017**

Basant Ram

.....Appellant

Vs.

Lal Chand and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Harchand Singh Batth, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Present regular second appeal, at the hands of unsuccessful plaintiff, is directed against the impugned judgments and decrees passed by the learned courts below, recording their concurrent findings of facts, while dismissing the suit for permanent injunction.

Brief facts of the case, as recorded by learned first appellate court in para 2 of its impugned judgment, are that it was pleaded case of the plaintiff that he was in possession of the suit land since 2005. Originally the suit property was owned by Gurdev Kaur widow of Sohan Singh. During her life time, she had given five marlas plot comprised in khasra No.85 to plaintiff vide a writing duly thumb marked by her and signed as witness by her daughter namely Narinder Kumari. Said Gurdev Kaur died. Plaintiff

constructed boundary walls and installed iron gate on the said plot. Defendants had no right, title or interest in the suit property nor they had any concern with the same in any manner. The plaintiff was in exclusive possession of the suit property and had every right to use the same in any manner because he was in lawful possession of the same. Defendants were laying threat to the possession of plaintiff.

Having been served, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP
2. Whether the suit is not maintainable in the present form?OPD
3. Whether plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the court?OPD
4. Whether plaintiff has got no locus standi to file the present suit?OPD
5. Whether the site plan attached with the plaint is incorrect?OPD
6. Whether the plaintiff is estopped from filing the present suit by his own act, conduct, admissions and laches?OPD
7. Whether the present suit is bad for non-joinder and mis-joinder of necessary parties?OPD
8. Whether no cause of action has accrued to the plaintiff against the defendants?OPD
9. Whether present suit is not properly valued for the purpose of court fee and jurisdiction?OPD
10. Relief.

With a view to prove their pleaded cases, both the parties brought on record their documentary as well as oral evidence. After hearing

learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has failed to prove his case. Accordingly, his suit for permanent injunction was dismissed vide impugned judgment and decree dated 7.3.2014. Feeling aggrieved, plaintiff filed his first appeal which also came to be dismissed by the learned first appellate court, vide impugned judgment and decree dated 14.7.2016. Hence this regular second appeal at the hands of the plaintiff.

Heard learned counsel for the appellant.

It is a matter of record and not in dispute that defendants were true owners of the suit property, on the basis of registered sale deed. On the other hand, pleaded and argued case on behalf of the plaintiff-appellant was that he was put into possession on the basis of a writing. However, he miserably failed to prove the said writing before the learned courts below. Defendants produced sufficient and cogent evidence to prove their pleaded case. Having said that, this Court feels no hesitation to conclude that learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees, which deserve to be upheld.

Before arriving at his judicious conclusion, learned first appellate court re-considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Cogent findings recorded by learned first appellate court in para 13 of its impugned judgment, which deserve to be noticed here, read as under:-

“After having considered the rival contentions of both the sides and having gone through the file very carefully, I am of the considered opinion that the present appeal merits dismissal. The present appellant/plaintiff has filed a suit for permanent injunction restraining

defendants/respondents from taking forcible possession of the suit property from the plaintiff. The case of plaintiff/appellant is that he is in possession of the suit property as the same was given to him by Gurdev Kaur vide a writing. Since the plaintiff/appellant is claiming his possession on the basis of this writing, therefore it was mandatory for him to prove the said writing in accordance with law. But plaintiff/appellant has failed to produce original writing on record. Even no explanation has been given as to why the original writing was not produced. Even no permission was sought by plaintiff from the court to prove this writing by way of secondary evidenced. Simply photo copy of that very document has been placed on the file and it is settled law that mere production of photo copy of the document cannot be held to be due proof of its contents. Except this photo copy of writing not even a single document has been placed on record to prove possession of plaintiff/appellant. Therefore, the learned trial court has rightly held that plaintiff/appellant has failed to prove his possession over the suit property. Whereas on the other hand the respondents/defendants have come with the specific stand that originally the suit property was the ownership of Mahant Sadhu Ram Chela Mahant Bishan Dass who has sold the same to Naresh Chander after receiving total sale consideration vide agreement Ex.D3. Thereafter said Naresh Chander sold the same to Elizabeth vide agreement dated 4.3.1995 Ex.D1 and thereafter one of the respondents Gulzar Singh purchased the same from said Elizabeth vide agreement dated 8.2.2011 Ex.D2 for a total consideration of Rs.2,80,000/- which has already been paid by him and thereafter he installed an iron gate after spending money from his pocket. In support of his contention besides

*proving agreements Ex.D1 to Ex.D3, he has also proved on record receipts Ex.D4, Ex.5 and Ex.D6 and original electricity bill Ex.D7 and all these documents prima-facie prove the possession of respondent Gulzar Singh. Even otherwise it is settled law that plaintiff has to prove his own case and he is to stand on his own legs. He cannot take benefit from the weakness of the respondents. Here in the present case, plaintiff/appellant has failed to prove his possession over the suit property. Therefore the learned trial court has rightly dismissed the suit of plaintiff/appellant. In **Tola Ram Vs.Mohan Lal 2012 (4) Civil Court Cases 529 (Raj.)**, it has been held that where both the parties claiming their title and plaintiff failed to establish his possession, it is justified to reject the suit for injunction in favour of plaintiff. Thus I am of the considered opinion that the learned trial court has rightly decided issue No.1 against plaintiff/appellant and in favour of respondent. The findings returned by the learned trial court on issue No.1 does not require any interference and same stands affirmed.”*

During the course of hearing, when asked to explain as to how the appellant was entitled to injunction against the true owners, learned counsel for the appellant had no answer and rightly so, it being a settled principle of law. Since the plaintiff-appellant has miserably failed to prove his possession over the suit property, his suit was bound to fail. Since the learned courts below committed no error of law, while passing their respective impugned judgments and decrees, the same deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon’ble Supreme Court as well as different High Court, including this Court:-

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Anathula Sudhakar Vs. P. Buchi Reddy (Dead) By Lrs
and others, 2008 AIR (SC) 2033

Sohan Singh Vs. Jhaman, 1986 (1) PLR 326 (P&H)

Mohinder Singh Vs. Pala Singh and others, 2010 (1) RCR
(civil) 750 (P&H)

Bank of Baroda, Bombay Vs. Shree Moti Industries,
Bombay and others, 2008 AIR (Bombay) 201 (Bombay
High Court.

Tola Ram Vs. Mohan Lal, 2012 (49) RCR (civil) 498
(Rajasthan High Court)

It goes without saying that appellant being plaintiff, onus was on him to prove that on the date of filing of suit for permanent injunction, he was in peaceful possession of the suit property. However, in the present case, plaintiff has failed to prove his possession over the suit property, because of which his suit was devoid of any merit. That is what has been held by the learned courts below, while recording their concurrent findings of facts.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments rendered by the learned courts below. He also could not point out any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. Concurrent findings of facts recorded by both the learned courts below have been found factually correct, legally justified and based on sound reasons. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

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No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

7.3.2017
Ak Sharma

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