

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

R.S.A. No. 3562 of 2015

Date of Decision:- 28.02.2017

Darshan Singh

....Appellant.

vs.

Faqir Chand

....Respondent

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Hitesh Kumar Sammi, Advocate,
for the appellant.

DAYA CHAUDHARY, J.

The present regular second appeal has been filed by appellant-Darshan Singh, who was defendant before the trial Court. Plaintiff-respondent Faqir Chand filed suit for possession of the land in dispute. Written statement to the suit was filed. The suit of the plaintiff was decreed in favour of plaintiff vide judgment and decree dated 1.8.2014 passed by the trial Court which was challenged by the present appellant by way of filing an appeal raising various grounds but the same was also dismissed vide judgment/decreed dated 19.2.2015 passed by the first Appellate Court.

Aggrieved by said judgments and decrees passed by both the Courts below, the present regular second appeal has been filed before this Court.

Learned counsel for the appellant submits that both the Courts

below have not properly appreciated the evidence adduced on record by the appellant. The possession of the house was given to the appellant by respondent-plaintiff which was adjoining the land belonging to the appellant. A huge amount was spent on construction of the house because of low lying length and having so many ditches. The appellant was having electric connection, ration card and voter card at the address of the house of which he was in actual possession. There was no revenue record produced by the respondent-plaintiff to show that he was in actual possession of the land in dispute. The possession of the said land with the plaintiff-respondent prior to alleged agreement to sell dated 20.12.2016 has also not been proved by any documentary evidence. It was proved from documents marked D-1 to D-3 and is also an admitted case of the respondent-plaintiff that in respect of other land of the appellant, the family members of the plaintiff-respondent also filed suit for specific performance of other agreement to sell. It shows that the respondent-plaintiff was interested to grab the land of the appellant. All these facts and evidence have not been taken into consideration by the trial Court as well as by the appellate Court.

Heard arguments of learned counsel for the appellant and have also perused both the judgments passed by the trial Court as well as of the Lower appellate court.

The facts regarding filing of civil suit by respondent and passing judgment and decree by the trial Court and thereafter filing appeal by the present appellant are not disputed. The following issues were framed by the trial Court:-

- “1. Whether the plaintiff is entitled for the relief of possession of land as fully mentioned in the head note of the plaint? OPP.
2. Whether the suit of the plaintiff is not maintainable ? OPD.
3. Relief.”

The findings recorded by the trial Court in para Nos. 13 and 14 are reproduced as under:-

“13. A new fact has been asserted and pleaded by the defendant that before leaving India, the plaintiff orally handed over alleged plot of the land to the defendant with further authorization to raise construction of the house thereon and the defendant accordingly spent huge amount in the construction of the house and started living therein along with family members and also got installed electric connection in his name. Now, the defendant Darshan Singh has never stepped into the witness to substantiate his version that he was merely handed over the alleged vacant plot in dispute where upon he raised construction of alleged house and installed electric connection etc. On the contrary, the plaintiff Faqir Chand has reliably and cogently deposed that he is the owner of the disputed house which was constructed by him after purchasing the plot by way of registered sale deed dated 18.5.2001 and he handed over

its possession to the defendant before leaving to USA along with family members with the instructions that whenever he comes back the defendant shall hand over its vacant possession to him and through out his cross-examination he denied of giving any false version and maintained that he is entitled for the possession of the house in dispute. It is reiterated here that the defendant Darshan Singh did not dispute the ownership of the property i.e. at least the disputed plot but then there is no cogent evidence of raising any construction of the house in question by the defendant by spending alleged huge amount or even installation of electric connection. It was incumbent upon the defendant Darshan Singh to have adduced some cogent evidence in view of his specific allegation that he constructed the house in question and not the plaintiff but then he never bothered to step into the witness box. Even the other witnesses examined by the defendant are laconic and vague who have failed to stand the test of cross examination or to rebut the plaintiff's version. In this regard, the statement of DW-1 is material who stated during his cross examination that the "land in question was purchased by Fakir Chand was lying vacant. The the house was constructed upon the land in question. Faqir Chand at the time of construction of house Darshan Singh was along with

him.” In other words, as per DW-1 at the time of construction of the house Darshan Singh was present along with Faqir Chand which was not even the case of the defendant as per the written statement. Faqir Chand moved to USA after handing over vacant plot. That DW-1 is silent and laconic about the purchase of building material by the defendant or the use of transportation for bringing building material etc. for the construction of the house in question which exposes his lie. Similarly, DW-2 is also not reliable during his cross examination as he is not even aware who is the registered owner of the disputed plot. Just like DW-1 he is not aware of means of transportation used for bringing the construction material for the construction of the alleged house. He is not in possession of any document such as receipts for purchase of building material. Lastly, even DW-2 stated that at the time of alleged construction Faqir Chand was present in the village which fact is contrary to the version of written statement as per which the plaintiff allegedly left India after giving the plot to the defendant where the later raised construction of alleged house.

14. The ownership does not admit of any embargo as it is a superior right than the right of possession of an immovable property. The plaintiff being the owner of the property in question i.e. disputed house has every right to

get its possession from the defendant who was merely given temporary residential right being close relative of the plaintiff. So the plaintiff is clearly entitled for possession of the disputed house/land bearing its khewat/khatoni No. 34/109 khasra no. 268/2min (1-0) situated within the revenue estate of village Sawajpur, Tehsil and District Patiala and the house constructed on the afore said land. Hence findings of issue no. 1 is returned in favour of the plaintiff and against the defendant.”

Similarly the findings recorded by the Lower Appellate Court in para No. 14 are also reproduced as under:-

“14. After perusal of the oral as well as documentary evidence on record, plaintiff/respondent duly proved on record jamabandi Ex. P1 and on the basis of which Fakir Singh is the owner in possession of the plot in question. Admittedly, plaintiff was in possession of the plot in question and as per the averments of the plaintiff, he handed over the possession of the plot to the defendant being near relative and this fact is also not denied by the defendant. Rather, the only plea has been taken by the appellant/defendant that he was earlier residing with the plaintiff before plaintiff had gone abroad. DW 2 Des Raj, father of defendant stating that the defendant was adopted by plaintiff, but defendant has

failed to prove on record any adoption deed. So the evidence led by the defendant, witnesses themselves admitted in their cross examination that the land in the name of Fakir Chand in the revenue record and they do not know whether any adoption deed was executed by Fakir Chand of Darshan Singh. As regard the construction over the plot is concerned, DW-2 Des Raj stated in his cross examination that he can not tell the number of tractor/trolley, which was used for putting earth and it is also admitted that Fakir Chand asked the defendant for vacation of the house and he is raising hue and cry for the vacation of house and then he has not vacated the same meaning thereby appellant/defendant himself is admitting the plaintiff is owner of the suit land on which they are in possession at present.”

On a perusal of the findings recorded by both the Courts below and on the basis of oral as well as documentary evidence on record, it stands proved on record from Jamabandi Exhibit P-1 that Faqir Chand was owner in possession of the plot in dispute. Plaintiff handed over the possession of the plot to the present appellant being close relative which fact has not been denied by the appellant also. It has been stated by the appellant himself that he was residing with the plaintiff before going to abroad and he was adopted by the plaintiff but the appellant failed to prove on record any adoption deed. Appellant himself has admitted in his cross-examination that the land in dispute was in the name of respondent in the

revenue record and he denied any adoption deed executed by the respondent. While raising construction of the house the tractor trolley which was used in putting earth, even he has failed to tell its number. Not only the ownership of the plaintiff-respondent has been admitted by the appellant but its possession has also been admitted.

By considering the concurrent finding and the oral as well as documentary evidence to prove the ownership and possession of the house in dispute in favour of the respondent-plaintiff, no interference is required by this Court with the judgments of the trial Court as well as the first Appellate Court.

Accordingly, the appeal being devoid of any merit is hereby dismissed.

February 28, 2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes