

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.5749 of 2016
Date of decision:14.7.2017**

Dalip Singh

...Appellant

Versus

Hukum Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Atul Lakhanpal, Sr. Advocate with
Ms.Babli Kumari, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Present regular second appeal, at the hands of plaintiff, is directed against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for permanent injunction was dismissed by the learned trial court and his first appeal was also dismissed by the learned first appellate court.

Brief facts of the case, as noticed by the learned first appellate court in para 3 of its impugned judgment, are that the suit for permanent injunction was instituted by appellant/plaintiff against the respondents/defendants with the assertions that he was owner in possession of baras as fully detailed and described in para No.1 of the plaint and he was in actual possession of the portion measuring 38' x 35'5" with boundaries as mentioned in para No.2 of the plaint. It was claimed that plaintiff had constructed residential house consisting of two rooms, one latrine which was dismantled by defendants forcibly and illegally. He also

planted two Neem trees. There was a water hand pump and the plaintiffs was in actual and physical possession of the portion described above. It was further submitted that defendants had also constructed their house in the specific portion which the consent of each other but now they were bent upon to dispossess the plaintiff from the property in dispute.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff did not file any replication. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiff is entitled for a decree for permanent injunction as prayed for? OPP
2. Whether suit is not maintainable in the present form? OPD
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether the plaintiff has suppressed the true and material facts from the court? OPD
5. Whether the plaintiff has not come to the court with clean hands? OPD
6. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has failed to prove his case. Accordingly, his suit for permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 30.3.2013. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court by passing the

impugned judgment and decree dated 4.8.2016. Hence this regular second appeal, at the hands of unsuccessful plaintiff.

Heard learned senior counsel for the appellant.

It is a matter of record that the plaintiff was claiming the relief of permanent injunction against his co-sharers to the extent of an area measuring 4.9 marlas. Undisputedly, it was an unpartitioned joint property of many co-sharers. Plaintiff was claiming himself to be a co-sharer. However, he failed to bring on record any relevant documentary evidence about his exact share in the unpartitioned suit property.

When the learned senior counsel for the appellant was asked to refer to any material or evidence available on record as to on what basis the plaintiff-appellant was claiming his possession over the land measuring 4.9 marlas, he had no answer and rightly so, it being a matter of record, because there was no such material or evidence available, which may support the case of the appellant. Having said that, this Court feels no hesitation to conclude that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

Once the appellant was coming to the court as plaintiff, onus would always be on him to prove his case, by leading cogent and convincing evidence. Learned senior counsel for the appellant pointed out that share of the plaintiff-appellant was not 4.9 marlas but it was only 2.3 marlas and the suit of the plaintiff ought to have been decreed to that extent. If that is so, the entire pleaded case of the plaintiff was based on falsehood. Further, learned senior counsel for the appellant could not substantiate his argument that the share of the appellant was 2.3 marlas, because learned

senior counsel for the appellant could not refer to any such relevant revenue record in this regard.

In fact, it seems that plaintiff-appellant had been proceeding on a very casual approach right from day one. Although, it was not so difficult for him to prove his exact share in the unpartitioned suit property, yet he did not take any interest in this regard because of which no relevant and material evidence was brought on record. In such a situation, plaintiff was bound to fail. That is what has been held by the learned courts below. Under these undisputed facts and circumstances of the case, it can be safely concluded that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

It being a suit for permanent injunction on the basis of title, it was least expected from the plaintiff-appellant to prove his title as well as possession. However, he miserably failed to do so for the reasons best known to him. Neither he could prove his specific share in the unpartitioned suit property nor he could prove his possession on any part thereof. It also goes without saying that plaintiff has to stand on his own legs and should not try to prove his case on the alleged weakness of the case of the defendant. In the case in hand, plaintiff-appellant did not take due interest so as to bring on record relevant evidence to prove his title and possession and that too for no good reasons. A bare combined reading of both the impugned judgments and decrees would show that no fault can be found with the concurrent findings of fact recorded by both the learned courts below and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first

appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 20 to 22 of its impugned judgment, which deserve to be noticed here, read as under:-

“Upon going through the contents of the plaint, it is made out that case of the plaintiff is that disputed land having dimensions 38' x 35'5” is comprised in Khewat No.4, Khatoni No.7 and Khasra No.31, 36/1 and 40 but defendants in their written statement have taken a specific stand that there is no actual site in the Khewat No.4, Khatoni No.7 and Khasra No.31, 36/1 and 40 and this fact was further clarified by the deposition of the defendant witnesses who deposed in so many words that land in dispute is situated in Khewat No.22/22, Khatoni No.33 and Khasra No.55, 56 and 57. Since such a stand was taken by defendants in the written statement at the very beginning, therefore, it was incumbent upon the plaintiff to prove the fact as mentioned in para No.1 of the plaint by leading reliable evidence. In this behalf, plaintiff could very well have got the land demarcated from a revenue official and upon doing so, it would have come to light if land in dispute was a part and parcel of Khewat No.4, Khatoni No.7 and Khasra No.31, 36/1 and 40 or same was comprising in Khewat No.22/22. Hence, I am of the view that correct description of the land has not been given in the plaint.

Stand taken by defendants that disputed land is situated in Khasra No.55, 56 and 57 becomes clear from Aks shijra Ex.DW1/C wherein said Khasra numbers can be seen adjacent to each other abutting the phirni of the village. It has come in the statements of Joginder Singh PW1 and Ranjit Kaur PW2 that on one side of the land in dispute, there is phirni of the village. Further, according to the plaintiff, land in dispute is

situated in Khasra No.31, 36/1 and 40 but Aks shijra Ex.DW1/C reveals that these khasra numbers are quite at a distance from each other and hence, it was for plaintiff to explain as to in which khasra number, the land in dispute is in existence. On analysis of the evidence, it transpires that land in dispute is situated in Khasra No.55, 56 and 57 and hence, it is not possible to grant relief of permanent injunction in favour of plaintiff.

Further, as found by learned trial court, plaintiff has been living in Punjab for the last many years. He seldom visits his village Singhapura which also makes his plea as to he being in possession of the disputed property as not acceptable. Ld. trial court has correctly observed that if jamabandi entries are perused then total share of plaintiff in the disputed land is found to be only 2.3 Marlas but he is claiming his possession over land measuring 4.9 Marlas and having failed to explain his possession over land in excess of his share, makes him disentitled to discretionary relief of permanent injunction. Hence, findings recorded by ld. trial court on issue No.1 are affirmed. However, determination of ld. trial court on issues No.2 to 5 are not correct as once issue No.1 stood decided against the plaintiff, then there is no question of deciding the above issues in favour of plaintiff. Hence, issues No.2 to 5 are decided in favour of defendants and determination of the court below on those issues is reversed.”

There is another aspect of the matter and it is that the plaintiff was admittedly not residing in the village. It was specifically deposed by DW-1 Hukam Singh that although plaintiff Dalip Singh had a house but he sold the same. This seems to be the reason that the plaintiff did not take due interest in pursuing his suit. In this view of the matter, the inevitable conclusion is that the learned courts below were well justified to non suit

the plaintiff-appellant, because of which the impugned judgments and decrees deserve to be upheld.

The Hon'ble Supreme Court in **Maria Margarida Sequeria Fernandes's** case (supra), held that the person, who is claiming possession, must prove the same. Relevant observations made by the Hon'ble Supreme Court in paras 70 to 72 of its judgment, which can be gainfully followed in the present case, read as under:-

“70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.

- (a) who is or are the owner or owners of the property;*
- (b) title of the property;*
- (c) who is in possession of the title documents*
- (d) identity of the claimant or claimants to possession;*
- (e) the date of entry into possession;*
- (f) how he came into possession - whether he purchased the property or inherited or got the same in gift or by any other method;*
- (g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount;*
- (h) If taken on rent, license fee or lease - then insist on rent deed, license deed or lease deed;*
- (i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;*
- (j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and*
- (k) basis of his claim that not to deliver possession but continue in possession.*

71. Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents.

72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.”

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*** and ***Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.***

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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Consequently, both the impugned judgments and decrees passed by both the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

14.7.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No