

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

RSA No.4661 of 2015 (O&MM).

Date of Decision: 11.01.2017.

Bishambar Dass

....Appellant.

VERSUS

Rajinder Kumar @ Minta

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Dheeraj Mahajan, Advocate for the appellant.

SNEH PRASHAR, J.

This was Regular Second Appeal filed by appellant-plaintiff Bishambar Dass (hereinafter referred to as the “appellant”) impugning the judgment and decree dated 02.07.2014 passed in Civil Suit No.335 of 26.10.2012 by learned Civil Judge (Junior Division), Gurdaspur, partly decreeing the suit for permanent injunction and possession filed by the appellant against respondent-defendant Rajinder Kumar @Minta (hereinafter referred to as the “respondent”), which was upheld by the first appellate Court vide judgment and decree dated 06.05.2015.

Precisely, the facts are that the appellant claiming to be a resident of village Kahnuwan and annexing a site-plan with the plaint, pleaded that the property shown with letters AFED and FBCE was being utilized by him as Haveli since the time of his forefathers and on the northern side of said Haveli was his house situated. The portion FBCE was

alleged to have been encroached upon by the respondent in June, 2011 though he had no concern whatsoever with the said property. Alleging that the respondent was threatening to dispossess him from the portion AFED also and had refused to hand over possession of the portion FBCE, the appellant sought a decree of permanent injunction and prayed for recovery of possession of the portion FBCE from the respondent.

The case was contested by the respondent. He pleaded that the site-plan of the suit property furnished by the appellant was wrong. The appellant or his forefathers had never been in possession of the suit property. He alleged that the suit property is situated within the Lal Lakir of the village and measures 06 Marlas and was purchased by his father Manohar Lal and one Ram Kishan from Smt. Peso wife of Harnam Dass, resident of village Kahnuwan vide sale deed dated 06.01.1979. Subsequently, he sold 02 Marlas out of the western portion of the suit property to Parveen Kumari (daughter-in-law of the appellant) and delivered possession of the same to her. The remaining portion of the suit property measuring 04 Marlas i.e. FBCE is owned and possessed by him by virtue of inheritance from his father Manohar Lal.

On the rival contentions of the parties, following issues were framed:-

- (1) Whether the plaintiff is entitled for possession, as prayed for? OPP.
- (2) Whether the plaintiff is entitled to get the relief of permanent injunction as prayed for? OPP.
- (3) Whether the suit of the plaintiff is not maintainable in the present form? OPD.
- (4) Whether the plaintiff has no cause of action to file the present suit? OPD.

(5) Whether the suit is bad for non joinder of necessary parties? OPD.

(6) Whether the plaintiff has not come to the court with clean hands? OPD.

(7) Relief.

Both the parties adduced evidence in support of their rival contentions.

Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court partly decreed the suit restraining the respondent from dispossessing the appellant from the property marked with letters AFED forcibly and illegally without adopting due process of law and suit regarding relief of possession of the property marked as FBCE was declined.

Appellant preferred an appeal against the judgment and decree dated 02.07.2014 passed by learned trial Court which was dismissed by learned Additional District Judge, Gurdaspur vide judgment and decree dated 06.05.2015.

Feeling aggrieved, the appellant has filed the instant Regular Second Appeal.

The submissions made by Mr. Dheeraj Mahajan, learned counsel representing the appellant have been considered.

In the site-plan Ex.P1 proved in evidence by the appellant, he had shown his possession on portion of the property depicted by letters AFED and had alleged that the remaining portion depicted by letters FBCE is also part of the Haveli owned and possessed by him, but the respondent had forcibly taken possession of the same in the year 2011. Learned counsel for the appellant argued that since the suit property is situated within the Lal

Lakir of the village, there is no document of title qua the same. The deposition of the appellant that he was in possession of the portion FBCE since the time of his forefathers and had been forcibly dispossessed by the respondent, was corroborated by PW2 Garib Masih. They both were thoroughly cross examined by the respondent, but nothing such could be derived from them which could impeach their credibility. Learned counsel contended that The appellant was non suited by both the Courts below only by relying on a document i.e. alleged sale deed dated 06.01.1979 (Ex.D1), the translation copy of which is Ex.D1/A whereas the said document was neither stamped nor registered and, therefore, had no evidentiary value. It could not even be admitted in evidence for collateral purpose. To support his argument, learned counsel relied upon the law laid down in **Smt. Indu vs. Narsingh Das and others, 2013(4) R.C.R. (Civil) 861.**

Further, referring to the cross-examination of DW1 respondent Rajinder Kumar, learned counsel pointed out that there is an admission by the respondent that he had forcibly and illegally encroached upon the Haveli owned by the appellant. The admission of the respondent by itself proved the claim of the appellant and accordingly the appellant is entitled to recovery of possession of the portion of the suit property forcibly occupied by the respondent.

It is a settled proposition of law that the plaintiff has to stand on his own legs. In other words, he can succeed only on the strength of his own case and can take no benefit of any lacuna, defect or weakness in the case of the defendant. On the basis of one stray sentence in the cross-examination of respondent Rajinder Kumar, the appellant cannot claim

statement read as a whole indicates that there was some typographical error in recording the sentence referred to by learned counsel for the appellant. All suggestions put to the respondent in respect of ownership and possession of the appellant were categorically denied by the respondent. Right from the stage of pleadings, the respondent had denied that the appellant or his forefathers had ever been in occupation of the suit property or were owners. He categorically claimed that the property measuring 06 Marlas was purchased by his father Manohar Lal from one Peso and out of the said area he had sold 02 Marlas, falling on the western side, to Parveen Kumari, daughter-in-law of the appellant and had given possession of the same to her. He pleaded that the remaining portion i.e. depicted with letters FBCE is owned and possessed by him.

Indeed, the document Ex.D1, alleged to be a sale deed, is neither registered nor stamped and is merely an agreement. The document may be incompetent to confer a title but its contents deserve to be looked into only in the light of the document Ex.D17 i.e. a statement of Smt. Parveen Kumari, daughter-in-law of the appellant, made during a police enquiry. Parveen Kumari admitted that she had purchased only 02 Marlas' area from the respondent and had raged up the dispute with regard to the remaining portion at the instance of her father-in-law (the appellant) and her misconception had been cleared.

Admittedly, Parveen Kumari is the daughter-in-law of the appellant. The respondent in his pleadings specifically mentioned that he had sold only 02 Marlas area out of the plot measuring 06 Marlas, inherited by him from his father Manohar Lal, to Parveen Kumari daughter-in-law of the appellant. However, the appellant did not opt to examine Parveen

Kumari in his evidence in order to rebut the version of the respondent and promote his claim. He may have been giving complaints to the police authorities, copies of which Ex.D3 to Ex.D17 were produced by the respondents, but no substantive and reliable evidence could be produced by him to prove his or his forefathers' possession on the suit property i.e. portion FBCE. His claim with regard to possession over the said portion was rightly rejected with concurrent findings by both the Courts below.

Thus, there being no merit in the appeal, it is dismissed.

(SNEH PRASHAR)
JUDGE

11.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**