

123.

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

RSA-6059-2016 (O&M)

Date of decision:17.01.2017

Karam Singh

... Appellant

versus

Krishan Kumar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. A.K. Walia, Advocate,
for the appellant.

HARI PAL VERMA, J.

The appellant-plaintiff has filed the present regular second appeal against the judgment and decree dated 09.09.2016 passed by learned District Judge, Barnala whereby his appeal against the judgment and decree dated 21.01.2016 passed by learned Civil Judge (Junior Division), Barnala was dismissed with costs.

Briefly stated, the plaintiff had filed a suit for permanent injunction claiming to be owner of the plot, described in the plaint. The plot in question, was purchased by his father, namely, Dalip Singh from Budh Ram son of Rura Mal and Karam Chand son of Lal Chand vide writings dated 08.05.1968 and 04.05.1970 and from the date of such purchase, his father was in possession of the suit property as owner. His father died. Thereafter the appellant-plaintiff received the suit property by way of family settlement dated 12.02.1996 and as such is in possession over the same. He had grown trees on the suit property and used the same as

Ruri. The defendants have no concern with the suit property, but still, they

are trying to take forcible possession over the same as they are influential persons, and also trying to raise construction over it. The appellant-plaintiff requested the respondents-defendants to desist from the above said illegal act, but they were adamant to dispossess the appellant-plaintiff.

The respondents-defendants filed their written statement challenging, the maintainability, locus standi, cause of action and estoppel etc. On merits, they have denied the execution of any writing pertaining to the suit property and rather stated that the alleged writings dated 08.05.1968 and 04.05.1970 are forged and fabricated documents. It is further submitted that these documents are unregistered, unstamped and carry no legal sanctity in the eyes of law. They further averred that on the basis of these documents, no right has accrued to Dalip Singh in the suit property. They have also denied the execution of family settlement dated 12.02.1996 and have stated that the same is forged, fabricated and unregistered document. They have rather stated that the suit property pertains to Khewat No.357/355, Khatauni No.605, Khasra No.138(0-10) and the same has been shown in the ownership of Gram Panchayat, as the same had been created by obtaining land from the property of residents of the village, thus it is Jumla Mushtarka Malkan. The suit property was allotted to Rura Mal and Lal Chand and an entry in this regard was also made in proceeding book at Entry Nos.29 and 30 and since then, they (Rura Mal and Lal Chand) were the owners in possession of the suit property.

On the basis of pleadings of the parties, the trial Court formulated the following issues:-

- “1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
2. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD

3. Whether the present suit is not maintainable? OPD
4. Whether the plaintiff is estopped by his own act and conduct? OPD
5. Whether the plaintiff has not come to the court with clean hands and has concealed material facts? OPD
6. Relief.”

Since the plaintiff failed to prove his possession over the suit property, the trial Court held that the plaintiff is not entitled to the relief of permanent injunction and accordingly, dismissed the suit vide judgment and decree dated 21.01.2016.

Aggrieved against the judgment and decree dated 21.01.2016 passed by trial Court, the appellant-plaintiff filed an appeal before the learned District Judge, Barnala, but the said appeal was also dismissed vide judgment and decree dated 09.09.2016 with the following observations:-

“21. From the pleadings and evidence on file, it is clear that the plaintiff-appellant has relied upon the Bahi entries mark A and Mark B and he has produced on file translation of these documents which are Ex.P.9 and Ex.P.10, it is clear that these documents are unregistered and it has been rightly held by the learned lower court that these documents Ex.P.9 and Ex.P.10 cannot be read into evidence and even from the photographs Ex.P.1 to Ex.P.5, the possession of the plaintiff over the suit property is not proved. It has been rightly held by the learned lower court that the possession of the plaintiff over the suit property is not proved on the file. So, the plaintiff-appellant is not entitled to the relief of permanent injunction as prayed for. It is clear that the plaintiff himself while appearing as PW-3 has admitted that the suit property is not within the Lal Lakir (Red Line) of the village and the plaintiff-appellant has not placed on file any Jamabandi or Khasra Girdawari pertaining to the suit land. It is also clear that the plaintiff has claimed his ownership and possession over the suit land vide mark A and Mark B and these documents are unregistered so, the ownership of the suit property could not be transferred vide these documents. It has been rightly held by the learned lower court that the plaintiff-appellant is not proved to be in possession of the suit property.”

Aggrieved against both the judgments and decrees dated 21.01.2016 and 09.09.2016 passed by the courts below, the appellant has filed the present regular second appeal.

Learned counsel for the appellant has argued that the appellant-plaintiff had examined 5 witnesses including himself. PW1-Mandeep Kumar deposed that he is running a shop of photography at Bus Stand Bhadaur and on 03.03.2014, he clicked photographs Exs.P1 to P5 of the plot of the plaintiff situated at Village Alkada, District Barnala. Similarly, the appellant-plaintiff appeared as PW-3 and while reiterating his entire version as mentioned in the plaint, he had relied upon original Bahi dated 04.08.1968 and 04.05.1970 (Mark A & Mark B) and original family settlement dated 12.02.1996 (Ex.P8). At the same time, he also admitted that the dimensions of the suit property as mentioned in the plaint are not mentioned in the original family settlement (Ex.P8).

After hearing learned counsel for the appellant and perusing the record, I find that there is no illegality in the judgments and decrees passed by the courts below. The appellant-plaintiff has failed to establish his possession over the suit land and, therefore, he cannot succeed for the relief claimed in the plaint i.e. permanent injunction. He relied on documents i.e. Bahi-Mark A & Mark B, which are of no help. Similarly, Exs.P9 and P10 being unregistered documents cannot be read into evidence. When the concurrent finding of fact has been recorded that the appellant-plaintiff is not found in possession of the suit land, his plea for permanent injunction cannot succeed.

Thus, no substantial question of law arises in the present regular second appeal and the same is, accordingly, dismissed.

CM-15947-C-2016

Prayer in the application filed under Order 41 Rule 5 CPC is for staying the operation of impugned judgment/decreed of the lower appellate court and also staying the execution proceedings.

Since the main appeal has been dismissed by this Court, the application has become infructuous and is dismissed as such.

(HARI PAL VERMA)
JUDGE

17.01.2017
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No