

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

RSA No.986 of 2016 (O&M)
Date of decision: 01.03.2017

Jasvir Singh & another

-----Appellant(s)

Vs.

Balvir Singh & another

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Lalit Garg, Advocate
for the appellants.

HARI PAL VERMA, J.

Appellants-plaintiffs have filed the present Regular Second Appeal against judgment and decree dated 1.8.2015 passed by learned Additional District Judge, SAS Nagar, Mohali, whereby their appeal against the judgment and decree dated 30.5.2013 passed by learned Additional Civil Judge (Sr. Division), SAS Nagar, Mohali was dismissed.

Briefly stated, the appellant-plaintiffs (hereinafter called as “the plaintiffs”) filed a suit for permanent injunction restraining the respondent-defendants (hereinafter called as “the defendants) from interfering into their peaceful and lawful possession over the plot, as detailed in the plaint. As per the plaint, plaintiff no.1 and defendant no.1 are real brothers whereas plaintiff no.2 and defendant no.2 are their respective wives. The plot in question was purchased by Shadi Ram son of Achhar Singh from his brother Puran Singh. Shadi Ram had executed an *Iqrarnama* dated 2.1.1992 in favour of his four sons namely Gurcharan

Singh, Jasvir Singh (plaintiff no.1), Avtar Singh and Balvir Singh (defendant no.1). The original *Iqrarnama* was in the possession of Balvir Singh, defendant no.1, whereas the other sons were having the photocopies of the same. As per the *Iqrarnama* dated 2.1.1992, oral family settlement was done and the whole land was distributed between four brothers in equal shares, as all the four sons were serving their father very carefully. In the *Iqrarnama*, Shadi Ram had made a provision of houses for all of his sons, but since Jasvir Singh, plaintiff no.1, was given less land, he was given another plot measuring 8'x10'. The defendants had no legal right on the said plot, as they never came into possession over the said plot. On 28.2.2006, police came to the house of the plaintiffs, as the other two brothers had called the plaintiffs to the police station, without there being any FIR, and a compromise was entered between them. The said compromise was stated to be effected under pressure. The copy of the compromise was in the possession of defendant no.1. On the basis of the compromise, the defendants are trying to take physical possession of the plot in question from the plaintiffs, as the plaintiffs were in possession of the same, hence, the suit for the relief claimed.

On notice of motion having been issued, defendants put in appearance and filed their written statements, resisting the claim of the plaintiffs. They pleaded that their father namely Shadi Ram had never executed any *Iqrarnama* dated 2.1.1992 nor any family settlement ever took place. Rather, the father of plaintiff no.1 and defendant no.1 had executed a Will regarding Bara/abadi in favour of defendant no.1, as he was living with him and was being served by him. It is further averred

that their father Shadi Ram had given some land to them for construction of houses, on which, both the parties constructed their respective houses and thus, they are in possession of the same. The plot measuring 8'x10' in the corner was given to defendant no.1 by his father through Will dated 14.12.2007, as a reward for the services rendered by him. Shadi Ram father lived with defendant no.1 throughout his life. Moreover, the defendant no.1 was in possession of the plot in question, as owner.

From the pleadings of the parties, following issues were framed:-

- “1. Whether the plaintiffs are entitled to the relief of declaration as prayed for? OPP.
2. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP.
3. Whether the father of the defendant no.1 executed Will dated 14.12.2005 in favour of defendant no.1? OPD.
4. Relief.”

Learned trial Court after hearing both the sides and appreciating the evidence on record dismissed the suit vide judgment and decree dated 30.5.2013.

The trial Court held that the plaintiffs have rested their claim over the plot in question on the basis of *Iqrarnama* dated 2.1.1992, however, they failed to prove the *Iqrarnama* dated 2.1.1992 (Ex.P1) by leading any primary evidence, as the plaintiffs had just led photocopy of the *Iqrarnama* in evidence. On the other hand, the defendants have claimed that Shadi Ram, father of plaintiff no.1 and defendant no.1 had executed a Will dated 14.12.2005 (Ex.D1), which was signed by two witnesses namely Sarpanch Gurmail Singh and Gurmeet Kaur, the

attesting witnesses. As per the Will, Shadi Ram had given the suit property to defendant no.1. Thus, the plaintiffs have failed to prove the *Iqrarnama* dated 2.1.1992, which is the very basis of their claim.

Aggrieved from the aforesaid judgment and decree passed by the trial Court dated 30.5.2013, the appellant-plaintiffs preferred an appeal before the first Appellate Court which was also dismissed vide judgment and decree dated 1.8.2015.

Still not satisfied, the appellant-plaintiffs have filed the instant appeal submitting that following substantial questions of law arise in this appeal for consideration of this Court:-

- “(i) Whether the judgment and decree passed by both the Courts below is based upon misreading and mis-appreciation of the evidence on record and therefore this Hon’ble Court can interfere into the findings of fact recorded by both the Courts below?*
- (ii) Whether in the facts and circumstances of the case, it is proved on the record on the basis of evidence led by the plaintiffs and the admission made by the defendant while appearing as witness that the plaintiff is in possession of plot in dispute and therefore, entitled for relief of permanent injunction?*
- (iii) Whether the provision of Section 65 of the Evidence Act have been wrongly interpreted by both the Courts below?*
- (iv) Whether the judgment and decree passed by both the Courts below is perverse and illegal?*
- (v) Whether it is proved on record that the plaintiff is in possession of the plot in dispute on the basis of oral family settlement?”*

Learned counsel for the appellant has argued that the findings recorded by both the Courts below are totally perverse with regard to issues no.1 and 2, though with regard to issue no.3, learned lower Appellate Court has rightly discarded the evidence led by the defendants. There was an oral family settlement between the brothers and the whole land was distributed between the four brothers in the equal shares. Thus, their father had made a provision of houses for all his four sons. Since the size of plot of plaintiff no.1 was smaller in size vis-à-vis other brothers, his father had given him another corner plot measuring 8'x10', to which his brother Gurcharan Singh had no objection and as on date, the plaintiff is in possession of the said plot. He has further argued that the Courts below have not taken into consideration the admission by Balbir Singh, defendant no.1, in examination-in-chief, wherein possession of the plaintiffs over the suit property was admitted. In support of his arguments, learned counsel for the appellant has relied upon a judgment of this Court in the case of **Gram Panchayat, Karasan, Tehsil Naraingarh v. Ram Chander & others 2016(3) Law Herald (P&H) 2014** to contend that when no documentary evidence has been placed on record by either of the parties, as both the parties had claimed ownership and possession over the land in dispute, admission is the best proof of the facts, for the purpose of grant of injunction. Therefore, in order to grant injunction, possession is of paramount importance.

I have heard learned counsel for the plaintiff-appellants and perused the impugned judgments passed by the Courts below.

So far as relationship of the parties is concerned, there is no dispute that Shadi Ram was the father/predecessor of the parties. Shadi

Ram had four sons namely Gurcharan Singh, Jasvir Singh (plaintiff no.1), Avtar Singh and Balvir Singh (defendant no.1). The dispute is with regard plot measuring 8'x10' which is situated in Village Raipur Khurd. The claim of the plaintiff-appellants is that vide *Iqrarnama* dated 2.1.1992, the said plot was given to plaintiff no.1 by his father Shadi Ram, as the property which fell to his share was lesser than that of his other brothers. Therefore, this piece of land was given to him in order to compensate him vis-à-vis the land distributed to other brothers. The said *Iqrarnama* dated 2.1.1992 has been examined by the lower Appellate Court minutely and it came to the conclusion that the properties covered by *Iqrarnama* dated 2.1.1992 (Ex.P1) were not owned by Shadi Ram and therefore, Shadi Ram could not have executed any family settlement, thereby, distributing these properties amongst all his four sons. Plaintiff-appellants have sought declaration to the effect that they have become absolute owners of plot measuring 8'x10' on the basis of *Iqrarnama* dated 2.1.1992, but no such plot has been found mentioned in the *Iqrarnama* dated 2.1.1992 (Ex.P1). Existence of plot measuring 8'x10' has not been denied by the contesting defendant-respondents, rather defendant-respondent no.1-Balvir Singh has claimed himself to be owner of the suit plot on the basis of Will dated 14.12.2005 (Ex.D1). Though this Will has been found to be suspicious by the lower Appellate Court, but without entering into any controversy and noticing that the present suit was filed by the plaintiffs to seek injunction, protecting his peaceful possession over the suit land, plaintiffs were required to prove that they were in possession of the suit land. But despite heavy onus rested upon the plaintiffs, they have failed to establish their exclusive possession over the suit land.

In order to prove their case, the plaintiffs are required to stand on their own legs. Since the plaintiffs have not been able to bring out any substantial piece of evidence to establish his possession over the suit land, the Courts below have rightly declined them the relief sought. As far as the judgment of this Court relied on behalf of the plaintiff-appellants in the case of **Gram Panchayat, Karasan, Tehsil Naraingarh v. Ram Chander & others** (*supra*) is concerned, the same is of no help to the appellants for the reason that the plaintiff-appellants have failed to establish their possession over the suit land. The appellants cannot derive any benefit of the affidavit of defendant no.1-Balvir Singh, because in the same paragraph, the deponent has stated that he along with his wife are making dung cakes in the property. It means that defendant no.1 was in possession of the suit land. Thus, this Court finds no illegality in the judgment and decrees passed by the Courts below.

Therefore, no exceptions can be taken to the concurrent findings of facts recorded by the Courts below. No substantial questions of law arise in this appeal.

In view of the aforesaid, this Court finds no merit in this appeal.

Dismissed.

March 01, 2017

AK

(HARI PAL VERMA)

JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No