

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

**RSA No.694 of 2015
Date of Decision:30.8.2017**

Kartar Singh

...Appellant

Versus

Ajaib Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.G.L.Bajaj, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful plaintiff is in the second appeal 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, vide its impugned judgment and decree dated 7.3.2014 and his first appeal also came to be dismissed vide judgment and decree dated 24.9.2014 passed by the learned first appellate court, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of the impugned judgment, are that the plaintiff filed a suit on the averments that he was owner in possession of land measuring 12 marlas vide sale deed No. 2300 dated 13.02.1962. On the basis of document, entry was not made in the revenue record and proceedings were pending. Mutation was sanctioned in favour of plaintiff in view of order of learned Commissioner, Faridkot dated 19.11.1998. The plaintiff was owner in possession of the suit land since 13.02.1962. The defendants had no concern with the same. The defendants were bent upon to take forcibly

possession and to raise construction and to alienate the property for which they had no right. In case they succeed, plaintiff would suffer an irreparable loss.

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:-

- i. Whether the the plaintiff is entitled for permanent injunction as prayed for? OPD
- ii. Whether the plaintiff has concealed true facts from the Court? OPD
- iii. Whether suit of plaintiff is not maintainable in the present form?OPP
- iv. Whether the plaintiff has no locus stndi and cause of action to file the present suit? OPP
- v. Relief

With a view to prove his pleaded case, plaintiff himself appeared as PW-1 and examined another witness Aasa Singh as PW-2. However, he did not produce on record any documentary evidence and thereafter he closed his evidence. Defendants examined three witnesses namely Ajaib Singh as DW-1, Beer Singh as DW-2 and Malkiat Singh as DW-3. They also tendered in their evidence jamabandi for the year 2009-10 Ex.D1. 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 pleaded case for want of cogent and sufficient evidence. He could not establish his possession over the suit land

as he was found residing at Bathinda. Accordingly, suit of the plaintiff for permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 7.3.2014. 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 24.9.2014. Hence this regular second appeal, at the hands of the plaintiff.

Heard learned counsel for the appellant.

Appellant being the plaintiff, onus was on him to prove his pleaded case by producing cogent and convincing evidence. However, he failed to prove his case for want of cogent evidence. Once the plaintiff-appellant could not prove himself to be in possession over the suit property, he was bound to fail. That is what has been held by both the learned courts below. Having said that, this Court feels no hesitation to conclude that both the learned courts were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

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 para 12 of its impugned judgment, which deserve to be noticed here, read as under:-

“Contention of ld. Counsel for the appellant is considered, same do not find merit in it. Present suit was filed by they plaintiff-appellant for decree of permanent injunction regarding land falling in Khasra no.145//162. Plaintiff-appellant failed to prove his possession over 12 marlas of land, rather perusal of jamabandi for the year 2004-05 Ex.P2

reveals that in khasra no.145//162 Kartar Singh was owner to the extent of $\frac{1}{4}$ share and vide mutation regarding inheritance of Santo Singh he inherited $\frac{1}{4}$ share of Santo Singh alongwith Jangir Singh. In this manner he was co-owner to the extent of $\frac{3}{8}$ share in the land in dispute. There is also entry of mutation no.6256 regarding sale of $\frac{3}{8}$ share by Kartar Singh in favour of Rajwinder Singh and Gurjinder Singh. Perusal of jamabandi for the year 2009-10 reveals that present appellant/plaintiff have no share in the property falling in khara no.145/162. So, plaintiff already sold his share at the time of filing the suit to the extent of $\frac{3}{8}$ share in the total land measuring 12 marla. Plaintiff-appellant have also failed to prove sale deed dated 13.02.1962. Order dated 19.11.1998 Ex.P8 also do not advance the cause of the plaintiff-appellant as after passing of this order the appellant-plaintiff have already sold part of the land of his share as detailed in the jamabandi Ex.P2, in the jamabandi for the year 2009-10 plaintiff-appellant is neither reflected as owner nor in possession of suit land.

Present suit is for permanent injunction for which it was incumbent upon the plaintiff-appellant to prove his possession, but there is no iota of evidence to prove possession of the appellant. PW2 Aasa Singh also failed to substantiate the claim of the plaintiff-appellant as during cross-examination he made statement that he have not visited village Dalelwala for the last 10/12 years. Kartar Singh plaintiff is residing at Bathinda for the last 10/12 years. Earlier to this he resided at Mansa for 5/7 years. So in view of his cross-examination it is proved that plaintiff-appellant is not in possession of the suit land. It is settled proposition of law that for claiming injunction on the basis of possession, it was for the plaintiff-appellant to prove his possession. But neither in view of oral nor in view of documentary evidence, plaintiff-appellant was able to establish his possession over disputed land.”

It was not a suit for declaration. Appellant/plaintiff was seeking

only a decree for permanent injunction against the defendants. Plaintiff was supposed to stand on his own legs and should not try to prove his case on the alleged weakness of the case of the defendant. However, in the present case, appellant-plaintiff miserably failed to bring on record the relevant and sufficient evidence in support of his pleadings because of which, he was rightly non-suited by both the learned courts below. On the other hand, defendants brought on record sufficient documentary as well as oral evidence. Both the learned courts below have recorded their concurrent findings of facts. In this view of the matter, no fault can be found with both the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

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 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.

30.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

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