

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

RSA No.4005 of 2014 (O&M)

Date of Decision: 27.03.2017.

Gurdeep Singh

....Appellant.

VERSUS

Kulwant Singh and others

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. G.S. Nagra, Advocate for the appellant.

SNEH PRASHAR, J.

The instant Regular Second Appeal has been filed by appellant-plaintiff Gurdeep Singh (hereinafter referred to as the 'appellant') assailing the judgment and decree dated 16.04.2014 passed by learned Additional District Judge, Amritsar as well as judgment and decree dated 06.09.2013 passed in Civil Suit No.317 of 19.07.2010 by learned Civil Judge (Junior Division), Amritsar, by virtue of which suit for permanent injunction filed by the appellant against respondents-defendants Kulwant Singh and others (hereinafter referred to as the 'respondents') was dismissed and the appeal preferred by him was also dismissed.

Appellant-Gurdeep Singh filed a suit for permanent injunction seeking to restrain the respondents from interfering into his peaceful possession over the property/plot situated in the revenue estate of village Verka, the dimensions and boundaries of which were given in the head note of the plaint (hereinafter referred to as the 'suit property') claiming to have

purchased the said property vide registered sale deed dated 24.04.2008 for a consideration of Rs.2,34,000/- from Varinder Singh and Simarjit Singh sons of Baldev Singh son of Zail Singh. It was pleaded that the suit property consists of a plot and two shops in the front side as shown in red colour in the site plan annexed with the plaint. The water and electricity connection installed in the suit property was in his name and he had been regularly paying the bills. Mutation on the basis of the sale transaction had been sanctioned. The respondents had no right, title or interest in the suit property but were bent upon to interfere in his possession which necessitated filing of the suit.

The suit was contested by the respondents. In the joint written statement filed by respondents No.1 and 2, it was pleaded that the sale deed, which the appellant claims to be in his favour related to a plot and not to the shops. Out of the shops in question, one was under the tenancy of son of the appellant namely Ranjit Singh @ Rana who had been paying rent to their (respondents' mother) after the death of their father and the other shop was in possession of Yashpal as a tenant. The land was jointly owned by them, the vendor of the appellant and other co-sharers. The electricity connection/ meter installed in the shops was in the name of their father (Jarnail Singh) and the appellant by concealing material facts had got the said meter removed and got installed a new meter in his name. The mutation was also said to have been wrongly sanctioned in favour of the appellant for which an order for correction of the same had been passed by the revenue authorities and the departmental enquiry had been initiated against the Area Patwari. It was also submitted that the vendors of the appellants were

the appellant was executed in respect of 6 Marlas land which was illegal and unauthorized.

Same, as above, were the pleas raised by respondent No.3 in a separate written statement filed by him.

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

1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP.
2. Whether the present suit is not maintainable? OPD.
3. Relief.

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

Considering the submissions made on behalf of the parties and the evidence on record, learned trial Court dismissed the suit vide judgment and decree dated 06.09.2013.

The appellant preferred an appeal which was dismissed by learned first appellate Court vide judgment and decree dated 16.04.2014 dismissed the appeal.

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

The submissions made by Mr. G.S. Nagra, learned counsel representing the appellant have been heard and record perused.

At the very outset, learned counsel for the appellant argued that it was not disputed by the respondents that Varinder Singh and Simarjit Singh, vendors of the appellant, were co-sharers in the land comprised in Khasra No.1465 min, Kehwat/Khatoni No.607/924 situated in village Verka, abadi Ajit Nagar, Tehsil Amritsar. The registered sale deed dated

share of Varinder Singh and Simarjit Singh for a consideration of Rs.2,34,000/- was duly proved on record. By virtue of the said sale deed, the appellant became owner of the plot purchased by him and it is on the said plot that the shops in question of the appellant are in existence. Respondent No.1 Kulwant Singh, who stepped into the witness box as DW3, admitted in his cross-examination that there are five shops in existence on the suit property. Out of the five shops, three are in possession of the appellant in the capacity of a tenant and out of the remaining two, one is in possession of his son Rajinder Pal Singh and the other is a Government depot. He also admitted execution of sale deed Ex.PW1/A by Varinder Singh and Simarjit Singh in favour of the appellant. The sale deed in favour of the appellant had not been challenged by the respondents. It was also admission of DW3 that the electricity connection installed in the shop is in the name of appellant Gurdeep Singh and that the mutation regarding the sale deed had been sanctioned in favour of the appellant. Learned counsel urged that when all relevant facts relating to ownership and possession of the appellant in respect of the shops in question stand admitted by the respondents, the appellant becomes entitled to an injunctive order restraining the respondents from interfering in his possession.

The arguments of learned counsel for the appellant may appear to be attractive but are devoid of merit. Admittedly, the sale deed dated 24.04.2008 (Ex.PW1/A) in favour of the appellant is with regard to a plot measuring 58' x 28' i.e. 180 square yards comprised in Khasra No.1465 min, Khewat/Khatoni No.607/924, situated in village Verka. As per Jamabandi for the year 2001-2002 (Ex.PX), the total land comprised in Khasra

Singh and Simarjit Singh (vendors of the appellant) and other co-sharers. No co-sharer was recorded to be in possession of any specific portion of the joint land. When no partition between the co-sharers had taken place and the land was still joint between the parties, sale of even specific portion of land would amount to sale of only a share in the joint land. Since the vendors were not in exclusive possession of any portion of the joint land, they could not deliver possession of any such portion and the recital regarding delivery of possession would create only symbolic possession of the purchaser-appellant. The sale deed may or may not have been challenged by the respondents before a competent Court of jurisdiction, but there are no two thoughts on the proposition of law that a vendor cannot pass a better title in the property than he himself has. Every co-sharer has a right over every inch of the joint land till it is partitioned by metes and bounds. As such, the property, being joint holding of the respondents, the appellant who stepped into the shoes of his vendors had no right to claim a relief of injunction against the other co-sharers.

The matter does not end here. The sale deed dated 24.04.2008 (Ex.PW1/A) in favour of the appellant is completely silent with regard to existence of any shops on the land/share purchased by the appellant. For the reason that respondent No.1 Kulwant Singh admitted in his cross-examination that there were three shops on the suit land, cannot be read in the sense that the shops were constructed on the plot purchased by the appellant as there is no recital regarding shops in the sale deed. In fact, purchase of plot as observed above in fact amounted to purchase of share of his vendors by the appellant. When no shop was sold to the appellant by

of the same on the basis of the said sale deed would not arise.

Thus, finding no illegality or perversity in the concurrent findings of learned trial Court and learned first appellate Court and there being no substantial question of law involved for decision in the regular second appeal, it is dismissed.

(SNEH PRASHAR)
JUDGE

27.03.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**