

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

RSA No.1670 of 2017 (O&M).

Decided on:-March 27, 2017.

Rajender Singh.

.....Appellant.

Versus

Inder Singh.

.....Respondent.

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

Present:- Mr. Deepak Girotra, Advocate
for the appellant.

HARI PAL VERMA, J.

The appellant-defendant has filed the present regular second appeal against the judgment and decree dated 09.12.2016 passed by learned District Judge, Rohtak whereby his appeal against the judgment and decree dated 23.10.2015 passed by learned Civil Judge (Junior Division), Rohtak, was dismissed.

Briefly stated, the respondent-plaintiff had filed a suit for permanent injunction restraining the appellant-defendant from encroaching upon his property and to remove the shed from the wall of the plaintiff from point 'X' to 'Y', as shown in the site plan attached with the plaint. The parties are real brothers. The plaintiff has claimed that he is owner in possession of commercial building consisting three plots shown in blue,

green and yellow colours and marked by letters ABCDEFGH in the site plan. The plot of the defendant shown in red colour in the site plan is adjacent to the shed of the plaintiff shown in yellow colour in the site plan. The plaintiff has constructed a wall on the southern side of the land from point 'F' to 'L', but the defendant while taking advantage of the absence of the plaintiff on the intervening night of 22/23.04.2007 illegally and forcibly used the wall of the plaintiff from point 'X' to 'Y' by constructing a shed in his plot. The defendant in order to encroach upon the property of the plaintiff, has not allowed the plaintiff to construct a wall from point 'L' to 'E' and from point 'E' to 'D' giving cause of action to the plaintiff to file the suit.

On notice having been issued to the defendant, written statement was filed, taking various preliminary objections including maintainability and suppression of material facts. However, on merits, it was pleaded that the plaintiff was neither owner nor in possession of the suit property. In fact, the father of the parties was owner in possession of the suit property, who purchased three plots from the funds received by him at the time of his retirement. The suit property was purchased from the retiral benefits which include the provident fund, gratuity and leave encashment. The sale deeds were got executed and registered in the name of the plaintiff being his son, who was about 19 years of age and was having no source of income to purchase the suit property. It is the father of the parties who raised construction over the plot in question and not the plaintiff as alleged. Thus, Shri Chandu Lal, who is father of the parties, is the real owner of the suit

property and the plaintiff has no independent right to claim ownership of the suit property. Therefore, the plaintiff is not entitled for the relief claimed.

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

1. Whether the plaintiff is entitled for decree of permanent injunction with consequential relief as prayed for on the grounds mentioned in the plaint? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the suit of the plaintiff is false and frivolous? OPD
4. Relief.

Issue No.1, which is crucial in the case, was decided in favour of the plaintiff vide judgment and decree dated 23.10.2015 passed by the trial Court. Accordingly, a decree of permanent injunction was passed in favour of the plaintiff and against the defendant. The defendant was restrained from interfering in the suit property of the plaintiff in any manner except in due course of law.

The trial Court has decreed the suit on the ground that the sale deed of the suit property was got executed in favour of the plaintiff. Though the defendant has alleged that the suit property was purchased from the money i.e. retiral benefits of his father Chandu Lal, but while appearing as DW2, said Chandu Lal has admitted that no land was purchased in his name. The trial Court has observed that the testimony of appellant-defendant Rajender Singh as DW1 and Chandu Lal as DW2 has revealed an admission

of the fact that the sale deed of the suit property exists in favour of the plaintiff. Once it is established that the suit property was in the name of the plaintiff, the defendant has no right to interfere in the possession of the plaintiff over the suit property.

Aggrieved from the aforesaid judgment and decree dated 23.10.2015 passed by the trial Court, the appellant-defendant preferred an appeal before the lower appellate Court, but the same has been dismissed by learned District Judge, Rohtak vide judgment and decree dated 09.12.2016. The lower appellate Court has opined that the trial Court has drawn its conclusion on the basis of sufficient material available before it. In support of his case, the plaintiff has successfully proved three original sale deeds dated 09.12.1985, 02.07.1986 and 11.07.1986 Ex.P1 to Ex.P3 respectively. Perusal of these sale deeds would reveal that the plaintiff has purchased three plots and this fact has not been disputed by the appellant-defendant. But he has pleaded that the suit property belongs to his father Chandu Lal as it was purchased from the funds received by his father at the time of his retirement. But the defendant has failed to place on record any documentary evidence in order to substantiate his plea that the suit property was purchased by his father Chandu Lal. The relevant paragraph No.13 of the impugned judgment passed by the lower appellate Court reads as under:

“13. Heard. Even this contention of the appellant-defendant is unable to cut much ice. As discussed earlier, the respondent-plaintiff is the absolute owner in possession of the property as detailed in the sale deeds Ex.P1 to Ex.P3 and even if, the appellant-defendant has encroached upon some portion,

he has no right to remain in possession of the same. Moreover, the respondent-plaintiff has also sought the relief of permanent injunction with regard to the remaining property upon which the appellant-defendant has not made any encroachment or construction. It is a settled proposition of law that no trespasser should be allowed to remain in possession against the wishes of the lawful owner. I have carefully gone through the citations relied upon by learned counsel for the appellant-defendant. There cannot be any dispute with regard to the proposition of law laid down in those authoritative pronouncements, but the same are not applicable to the facts and circumstances of the present case.”

Still aggrieved, the appellant-defendant has filed the present regular second appeal.

Following questions of law have been raised by the appellant-defendant:

- (i) Whether learned lower Courts have erred in decreeing the suit of the plaintiff and dismissing the appeal of the appellant without appreciating the law that the suit for permanent injunction alone is maintainable or not?
- (ii) Whether the right of ownership of the defendant-appellant is protected by Section 4 of the Benami Transactions (Prohibition) Act, 1988 or not?
- (iii) Whether the Courts below have appreciated the evidence of the parties in its right perspective or not?
- (iv) Whether the admission of the plaintiff himself qua the possession of the appellant over the suit property entitles the plaintiff to seek injunction without possession or not?
- (v) Whether the possession of the defendant-appellant is permissive given by the father of the parties who is

actual owner of the suit properties or not?

Learned counsel for the appellant-defendant has argued that the Courts below have erroneously held that as the sale deeds of the plots are in favour of the plaintiff, therefore, he being lawful owner of the suit property, the defendant cannot be allowed to encroach upon any portion of the suit property despite the fact that the father of the plaintiff and defendant has appeared as DW2 and he has specifically deposed that the properties were purchased from his self-earned resources i.e. the retiral benefits. Once the plaintiff himself has stated that the defendant came in possession of the suit property, then in that eventuality, the suit for permanent injunction was not maintainable. Since the plaintiff has admitted the factum of possession of the defendant over the suit property, the suit was not maintainable.

He has further argued that the Courts below have also not appreciated the deposition of the plaintiff, wherein he himself has stated that at the time of purchase of the property in question, he was unemployed and was living with his father, who was in police. The same goes to prove that the suit property was purchased by the father of the parties, though in the name of the plaintiff. But by way of family settlement, this property was given to the defendant for construction of a shed and the property was given by the father of the parties. Further, while appearing as DW1, the defendant has specifically deposed that at the time of purchase of the suit land by the father of the parties, the plaintiff was hardly 19 years of age and he had no independent source of income. Therefore, it goes un rebutted that when the plaintiff was hardly 19 years of age and had no source of income, the

property was purchased by their father. Moreover, the plaintiff was merely a school going student, when the property was purchased by the father of the parties. He has further argued that the transaction in favour of the plaintiff is hit by the provisions of the Benami Transactions (Prohibition) Act, 1988.

I have heard learned counsel for the appellant-defendant.

So far as the plea of learned counsel for the appellant-defendant there was a family settlement between the parties is concerned, the same cannot be accepted as the defendant has failed to produce any material, so as to prove the family settlement not only before the Courts below, but before this Court as well. The property in question is lying in the name of the plaintiff and he is the absolute owner of the same, as detailed in the sale deeds Ex.P1 to Ex.P3. Therefore, even if the appellant-defendant has encroached upon some portion of the suit property, he has no right to remain in possession of the same. The status of the appellant-defendant, if he has made encroachment for construction beyond his ownership, would lead to trespassing the property and no trespasser could be allowed to remain in possession against the wishes of a lawful owner.

It is not the case of the appellant-defendant that he is disputing that the sale deeds Ex.P1 to Ex.P3 of the suit property were not executed in favour of the plaintiff. His only plea is that the suit property was purchased from the money of the father of the parties, namely, Chandu Lal. But said Chandu Lal, while appearing in the witness box as DW2, has admitted that no such property was purchased in his name. Therefore, it goes un rebutted that the property in question was purchased by the respondent-plaintiff,

which is exclusively in his name.

Therefore, this Court does not find any illegality in the concurrent findings of facts recorded by the Courts below, whereby it has been established that the appellant-defendant is not the owner of the suit property and it has been held that the respondent-plaintiff is owner of the suit property on the basis of the sale deeds Ex.P1 to Ex.P3. Even no substantial question of law arises in the present regular second appeal.

No other point was argued.

Accordingly, the impugned judgments and decrees passed by the Courts below are upheld and the present regular second appeal is dismissed.

March 27, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No