

RSA No. 2688 of 2017(O&M)

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

**RSA No. 2688 of 2017(O&M)
Date of Decision: 18.5.2017**

Jamil and others

.....Appellants

Vs.

Umar Mohamad

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Jangvir S. Hooda, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful defendants are in regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, whereby suit for permanent injunction filed by plaintiff-respondent on the basis of his ownership and possession by way of sale deed, was decreed by the learned trial court vide impugned judgment and decree dated 16.2.2016 and the first appeal of the defendants was dismissed by the learned first appellate court, vide impugned judgment and decree dated 1.4.2017.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that plaintiff was owner in possession of plot marked by letters ABCD in the site plan attached with plaint, comprised in Rect. No. 25, killa No. 11/2 measuring 3 kanal 13

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marlas to the extent of 6/73rd share vide registered sale deed No. 1664 dated 3.12.1999 regarding which mutation No. 3454 was sanctioned. After purchasing the disputed plot, plaintiff constructed boundary wall thereon. Towards west side of the disputed plot, there was a mosque. Eastern wall of the mosque and western wall of the disputed plot were parallel to each other. With an intention to extend the area of mosque, defendants have partially demolished western wall of the disputed plot. Also, they were adamant to encroach upon entire disputed plot.

Having been served, defendants put appearance and filed their contesting written statement, taking more than one preliminary objections. On completion of pleadings of the parties, the learned trial court framed the following issues:-

- 1. Whether the plaintiff is entitled for a decree of permanent injunction on the grounds as alleged? OPP*
- 2. Whether the suit of plaintiff is not maintainable? OPP*
- 3. Whether the plaintiff has no cause of action or locus standi to file the present suit?OPD*
- 4) Whether the plaintiff has not come with clean hands before the court?OPD*
- 5. Relief.”*

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has duly proved his case by leading cogent and convincing evidence. Accordingly, his suit for mandatory injunction was decreed by the learned trial court, vide its impugned judgment and decree

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dated 16.2.2016. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 1.4.2017. Hence this regular second appeal at the hands of defendants.

Heard learned counsel for the appellants.

It has gone undisputed before this Court that plaintiff purchased the suit land by way of sale deed dated 3.12.1999 (Ex.P-1). Based on the said sale deed, mutation No. 3454 came to be entered and sanctioned in favour of the plaintiff. It also came to be recorded in the jamabandi for the year 2007-08 (Ex. PX). These three important and relevant documents would make it crystal that it was the plaintiff who was owner in possession of the suit land. It is so said, because as per the provisions contained in Section 44 of the Punjab Land Revenue Act, presumption of truth is attached with the revenue entries. It goes without saying that such presumption would also be rebuttable but the defendants-appellants herein failed to rebut such presumption by leading any contrary evidence. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

It is neither pleaded nor argued case on behalf of the defendants-appellants that they were claiming ownership over the suit property purchased by the plaintiff by way of abovesaid sale deed. Defendants-appellants were also not claiming their possession over the suit land. Under this undisputed fact situation, there was no occasion for the defendants-appellants to contest this litigation, which was very much avoidable, because they had no right over the suit land. It seems that present

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appeal is nothing more than clash of ego between the parties. So far as substantive right is concerned, it was certainly in favour of the plaintiff-respondent. That is what has been held by both the learned courts below. In this view of the matter, it can be safely concluded that the learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld.

Before arriving at a judicious conclusion, the learned first appellate court examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in para 16 to 18 of its impugned judgment, which deserve to be noticed here, read as under:-

“Feeling tight, learned counsel for the appellants contended that mosque is a juristic person as to held in Khushi Ram and another Vs. Punjab Wakf Board 1981 PLJ 572, Dr. Jai Ram Vs. Gurdwara Mud Hut Colony Refugee Camp, Malout Mandi and others, 1987 SLJ 29, Jai Singh Vs. Sri Guru Granth Sahib, Chhot and Lambi Dhab, Village Neor and Ors. 1989 PLJ 686 and Shiromoni Gurdwara Prabandhak Committee Vs. Som Nath Dass, 2000 (2) PLR 826 and as such, suit for injunction against private persons was not maintainable. The contention is overruled being beyond pleadings. It is not the case of appellants that they were trustee/caretakers or had any other concern with the management of mosque. Even otherwise, it is not an issue in the instant case whether

Mosque/Gurdwara is a juristic person or not.

Learned counsel for appellants also placed reliance upon Bondar Singh and Ors. Vs. Nihal Singh 2003 (2) RCR (civil) 222, Bhag Singh and anr. VS. Mula Singh 1987 RRR 431, Amarjit Kaur Vs. Bikran Singh & Anr. 2016 (3) Law Herald 1343, Manmohan Kaur Vs. Davinder Pal Singh, 2011 (3) PLR 677, Tarsem Singh Vs. Gurdeep Singh, 2016 (1) PLR, 212, M/s Delhi Towers Limited and others VS. Jai Chand Law Finder Doc ID # 767466, Sardul Singh Vs. Jagjit Singh and others, 2015 (5) Law Herald 4309 & Satpal and others VS. Resham and others, 2016 (1) PLR 9, however, none of them are attracted to the present case, as these have been rendered in connection with the peculiar situation arising in each individual case. In Bondar Singh (supra) & Bhag Singh and anr. (supra), it was held that an unregistered document can be looked into in evidence. However, in the instant case, appellants failed to prove very execution of writing Ex.DW5/B, in Amarjit Kaur (supra), rule of law was laid down regarding temporary injunction but instant case pertains to permanent injunction whereas in Manmohan Kaur (supra), Tarsem Singh (supra), M/s Delhi Towers Limited and others (supra), Sardul Singh (supra) & Satpal and others (supra) pronouncement was made regarding rights of co-sharer, however, in the case in hand appellants are

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not co-sharers. Needless to say that facts and circumstances of the case in hand and the cases reported in the authorities (supra) being not identical, authorities (supra) are not applicable to the case in hand.

This court does not find any illegality and has nothing to differ with in the findings of learned lower court on factual as well as legal issues. Learned trial court was fully justified in granting mandatory injunction in favour of respondent-plaintiff because appellants-defendants had made encroachment over disputed plot after filing of suit. Hence, the findings of learned Civil Judge on all the issues are affirmed. As a sequel to the discussion foregoing, there being no merit, the appeal is dismissed with costs throughout. The trial court has, thus, rightly decreed the suit and the impugned judgment is hereby upheld.

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments rendered by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a 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 regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and

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Santosh Hazari Vs. 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 present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

18.5.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No