

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

Date of decision: 19.07.2017

RSA No.2712 of 2017

Haji Faqir Mohammad

...Appellant

Vs.

Jagjiwan Singh (deceased) & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Gurbachan Singh Bhatia, Advocate, for the appellant.

RAJIV NARAIN RAINA, J. (ORAL)

This is a regular second appeal from the judgment and decree passed by the Additional District Judge, Sangrur on 14.12.2016 upholding the judgment and decree dated 05.02.2014 rendered by the Civil Judge (Junior Division), Malerkotla dismissing the suit.

The appellant was the plaintiff in a suit for prohibitory injunction sought against the defendant/respondent restraining the defendant from illegally and forcibly dispossessing him from agricultural land measuring 26 bighas 3 biswas fully detailed in the head-note of the suit. A restraint order was also sought against the defendant restraining him from interfering in the physical possession of the plaintiff over the suit land. His case was that he took this parcel of land from the predecessor-in-interest of the defendant vide lease agreement dated 25.11.2002. There is no dispute of the fact that this lease agreement was unregistered and, therefore, could not have been relied upon as evidence of leasehold right, title or interest in view of the provisions of Section 49 of the Registration Act. A lease of immovable property was compulsorily registrable.

Mr. Bhatia may not be wrong in saying that unregistered lease deed can be used for collateral purposes. However, in this case, direct right is sought to be derived from the so called lease deed to justify lease holding rights and possession over 19 bighas 3 biswas of land. It may be noticed as a fact that out of parcel of 26 bighas 3 biswas, consists of 7 bighas of land which have indisputably been purchased by the plaintiff and this is how the claim remains on 19 bighas 3 biswas.

Mr. Bhatia admits that partition proceedings are pending between the parties in which the plaintiff seeks the possession as a co-sharer. In view the pendency of partition proceedings, no opinion is expressed thereon. For the issuance of prohibitory injunction a strong prima facie case has to be made out on merits, which the plaintiff was unable to establish in the Courts below. Learned Additional District Judge has recorded that the contention of the plaintiff that suit land being in his possession is not made out in the absence of any corroboration from the entries in the revenue record.

There is no independent witness produced such as a neighbor or occupier of land in the vicinity of the suit land to buttress the plaintiff's claim over possession as a leaseholder. The unregistered lease agreement also cannot be said to be legal evidence of delivery of possession unless supported by unimpeachable oral evidence or a conclusive entry in the record of rights. Concurrent findings of fact have been recorded by the Courts below and I do not see any legal issue of any substance arising for determination or which is worth examining on the second appeal side of this Court. I can hardly find an error of law or fact committed by the courts below in relation to the evidence on record and from the face of the

judgment and decree in appeal. Findings of fact are not open to correction when they are firm and based on appreciation of evidence unless they are utterly perverse or are rendered by misreading the legal evidence or not considering important matter available on file.

Consequently, finding no merit in the appeal I would dismiss it in limine.

19.07.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>