

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

**RSA No.5967 of 2014 (O&M).
Date of Decision: 10.01.2017.**

Balwan Singh

....Appellant.

VERSUS

Chatter Singh and others

...Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Harkesh Manuja, Advocate for the appellant.

None for the caveator-respondent.

SNEH PRASHAR, J.

The instant appeal has been filed by appellant-plaintiff Balwan Singh (hereinafter referred to as the “appellant”) assailing the judgment and decree dated 28.08.2014 passed by learned Additional District Judge, Gurgaon as well as judgment and decree dated 19.12.2013 passed in Civil Suit No.RBT-1057 of 01.03.2008/ 19.01.2013 by learned Additional Civil Judge (Senior Division), Pataudi, District Gurgaon, by virtue of which suit for permanent injunction filed by the appellant against respondents-defendants Chatter Singh and others (hereinafter referred to as the “respondents”) was dismissed and the appeal preferred by him was also dismissed.

Precisely, the facts are that the appellant claimed to be owner-

Siwari, Tehsil Farrukhnagar, District Gurgaon shown with letters ABCDEF and in red colour in the site-plan attached with the plaint (hereinafter referred to as the “suit property”). He pleaded that a pucca room stands constructed on the suit property and he is residing in the same. Alleging that the respondents are strong handed persons and are bent upon to interfere in his peaceful possession and ownership, he prayed for a permanent injunctive order against them.

Respondents No.1 to 4 contested the suit. In the joint written statement filed by respondents No.1 to 4, they denied that the appellant is owner or is in possession of the suit property. According to them, Smt. Santosh (respondent No.5) is the sole owner-in-possession of the suit property by way of purchase through a registered sale deed and is residing in the property with her husband (respondent No.1) and children. They also alleged that since the appellant has no right, title or interest in the suit property, the question of interference by them in his ownership and possession does not arise.

Separate written statement was filed by Smt. Santosh (respondent No.5). Disputing the claim of the appellant, she submitted that she is actual owner of the suit property and had purchased the same by virtue of sale deed No.4509 dated 22.02.2008 for a valuable consideration of Rs.35,000/- from M/s Maharashtra Hybrid Seeds Co. Ltd. who was the owner of the suit property alongwith other property by virtue of the sale deed No.6272 executed and registered on 21.09.1988. The room constructed on the eastern side of the plot was in existence at the time of purchase of the suit property and subsequently she constructed a room measuring 13 ft. x 15

towards the West-South corner beside raising height of the boundary wall on all four sides. A big iron gate had been installed and she had been using the property for her residence.

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

- (1) Whether the plaintiff is owner in possession of the residential plot as detailed in para no.1 of the plaint? OPP.
- (2) Whether the sale deed vasika no.4509 dated 22.02.2008 is null and void and not binding upon the right, title and interest of the plaintiff? OPP.
- (3) Whether the suit of the plaintiff is not maintainable in the present form? OPD.
- (4) Whether the plaintiff has no locus standi to file the present suit? OPD.
- (5) Whether the plaintiff has not come with clean hands before this court? OPD.
- (6) Whether the plaintiff is estopped by his own act, conduct etc. from filing the present suit? OPD.
- (7) Whether the plaintiff has no cause of action or right as alleged? OPD.
- (8) Relief.

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

Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court finding that the appellant had failed to prove her ownership or possession over the suit property dismissed the suit of the appellant vide impugned judgment and decree dated 19.12.2013.

Appellant preferred an appeal against the judgment and decree

dated 19.12.2013 which was dismissed by learned Additional District

Judge, Gurgaon vide judgment and decree dated 28.08.2014.

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

The submissions made by Mr. Harkesh Manuja, learned counsel representing the appellant have been considered.

Learned counsel for the appellant argued that since the suit property is situated within the Lal Dora i.e. Abadi Deh of village Siwari, there is no record pertaining to the ownership rights qua the suit property. The deposition of the appellant that he is owner-in-possession of the suit property was duly corroborated by his father Rajender Singh who appeared as PW2. Learned counsel also contended that the respondents alleged the suit property to be evacuee property but could produce no document of allotment issued by the Custodian Department and could also not prove the title of their vendor. They alleged that respondent No.5 had purchased the suit property from M/s Maharashtra Hybrid Seeds Co. Ltd., but in response to a legal notice, the said company sent reply Ex.P9 denying that the suit property had been sold by it to respondent No.5. Learned counsel contended that the said document which negatives the claim of the respondents was not discussed by learned trial Court or by learned first appellate Court.

There appears to be no force in the arguments of learned counsel for the appellant. There are no two thoughts on the proposition of law that the plaintiff can succeed only on the strength of his own case and can take no benefit of any weakness, infirmity or lacuna in the case of the defendant. In the instant case, the appellant claimed to be owner-in-possession of the suit property. Except for ocular evidence consisting of his

reliable, could be produced by him to prove either his ownership or possession over the suit property. The appellant alleged that there was a room in existence on the suit property in which he was residing yet he produced no evidence to prove installation of any electric meter or water connection in the portion he was residing.

On the other hand, the respondents not only pleaded but also proved by tendering in evidence sale deed executed by M/s Maharashtra Hybrid Seeds Co. Ltd. in favour of Smt. Santosh (respondent No.5). The registered sale deed vide which M/s Maharashtra Hybrid Seeds Co. Ltd. had purchased the property from its earlier owner namely Lal Chand etc. was also produced. Relevant document Ex.DW3/1 showing installation of an electricity connection in the name of Smt. Santosh (respondent No.5) was proved by summoning the concerned official. The document proved that copy of sale deed and site plan of the suit property were annexed with the application given by Smt. Santosh (respondent No.5) for obtaining electricity connection in her name. Learned counsel for the appellant could not deny that the reply to the legal notice whereby according to him M/s Maharashtra Hybrid Seeds Co. Ltd. had denied having sold the suit property to Santosh (respondent No.5) was simply tendered in evidence and no person/ representative from the company was called to prove the said reply. When the document had not been proved in due process of law, it had no evidentiary value and was not required to be looked into.

The deposition of the appellant and his father were also not found to be trustworthy. Analyzing their testimony, the findings of learned first appellate Court are as under:-

counsel for the parties and perusing the record of the case carefully, it came into the notice that the appellant is claiming his right of ownership and possession through his father and grandfather. He also alleged that he is in possession of the property in question for the last 50-60 years and the property is situated within the Lal Dora abadi of village Siwari. The appellant proved the site plan Ex.P1 on record. He adduced his oral evidence to substantiate his version as alleged in the plaint. He also examined his father Rajender Singh as PW2. Appellant in his cross-examination admitted this fact that his grandfather was owner of a house situated at village Siwari which has been divided within his four sons. He nowhere deposed on oath how his grandfather and thereafter his father came into possession of the property in question. His father Rajender Singh examined himself as PW2 who also admitted this fact that his father was not having any land except 10 acres which has been purchased by his father. He deposed on oath that his ancestral property was situated in village Kathwaria Sarai. However, they were not having any ancestral property in village Siwari. He also admitted this fact that they did not purchase any land in the abadi deh of village. He also admitted this fact that his son Balwan was residing at village Nazafgarh. Undoubtedly, in view of the admission by PW2 Rajender, it is apparent on record that they did not purchase the land situated within the abadi deh of village Siwari nor they were having any ancestral property there. PW1 Balwan

deposed on oath that he had installed an electricity connection in the property in question but failed to depose the electricity connection number. Even he did not adduce any kind of electricity bill or any other document related to electricity connection, while contrary to it DW3 Satish proved the document Ex.DW3/1 (consisting of 22 pages) which speaks that the electricity connection is with the name of respondent no.5 Santosh Devi.”

Learned counsel for the appellant failed to demonstrate any misreading or misappreciation of evidence by learned trial Court or first appellate Court. While the appellant failed to produce any evidence to prove his ownership and possession over the suit property, the respondents did adduce substantive and reliable evidence.

Resultantly, there being no merit in the appeal and also as no substantial question of law arises for intervention in the concurrent findings of learned trial Court and learned first appellate Court, the instant appeal is dismissed.

(SNEH PRASHAR)
JUDGE

10.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**