

RSA No. 4686 of 2017 (O&M)

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

**RSA No. 4686 of 2017 (O&M)
Date of Decision: 9.10.2017**

Janeshwar and another

.....Appellants

Vs.

Janak Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Ashik Ali, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful defendants are in regular second appeal against the impugned judgment of reversal, whereby first appeal of the plaintiff was allowed by the learned Additional District Judge, vide his impugned judgment and decree dated 24.8.2017, setting aside the judgment and decree dated 14.1.2014 of the learned trial court and finally suit for permanent injunction filed by the plaintiff-respondent, was decreed.

Brief facts of the case, as noticed by learned first appellate court in para 2 of its impugned judgment are that plaintiff filed suit against the defendants/respondents, seeking relief of permanent injunction restraining the defendants from interfering in the actual, peaceful and physical possession of the plaintiff by way of demolishing the wall of the house of the plaintiff by forcibly dispossessing the plaintiff or in any other manner whatsoever from the land measuring 2 Kanal out of total land measuring 17 Kanal 11 Marla, as detailed in the head note of the plaint.

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The case set up by the plaintiff was that plaintiff, alongwith his brother Dharminder Singh and uncle Shri Ugar Sain, had purchased the suit property and since then plaintiff alongwith his brother and uncle were using suit property for their residence as well as for agriculture purpose. They had raised construction on part of suit property by spending huge amount. They also raised the boundary walls on three sides of the suit land. Plaintiff's uncle was a religious person having full faith in religious activities. Some part of the suit property was also being used by the plaintiff and his uncle for performing religious rituals of Hawan and Bhandara of Devi at point J, so depicted in the rough site plan (Ex.P1) attached with the plaint. The defendants had no right or title to enter in the suit land but they started interfering in the actual, peaceful proprietary possession of the plaintiff over the suit property. They started intimidating the plaintiff to demolish the wall of the house of the plaintiff and to forcibly dispossess the plaintiffs from the suit property without any legal right or authority. He requested the defendants not to interfere in the peaceful and physical possession of the plaintiff over the suit property but to no avail. He also pleaded that defendants actually tried to demolish the wall of the house of the plaintiff and dispossess him from the suit land, however, the situation was saved by timely intervention of respectables of the village. He also averred that the defendants were interfering in his peaceful possession over the suit property, which necessitated him to file suit.

Having been put to notice, defendants appeared and filed their contesting written statement raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues: -

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- 1) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
- 2) Whether the present suit is not maintainable? OPD
- 3) Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
- 4) Relief.

In order to prove their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiff has partly proved his case regarding his ownership. Accordingly, his suit was partly decreed by the learned trial court, vide its judgment and decree dated 14.1.2014. Plaintiff felt aggrieved and filed his first appeal, which came to be allowed by the learned Additional District Judge, vide his impugned judgment and decree dated 24.8.2017. Hence this regular second appeal at the hands of unsuccessful defendants.

Heard learned counsel for the defendants-appellants.

Ownership of the plaintiff-respondent over the suit land has gone undisputed at the hands of the appellants. It is also the settled proposition of law that possession goes with the title, unless it is pleaded and proved to the contrary. When the defendants were trying to encroach upon the suit land owned by the plaintiff, he was forced to come to the court by filing a suit for permanent injunction. In such a situation, the learned trial court ought to have decreed the suit of the plaintiff in toto. However, since the suit of the plaintiff for permanent injunction was partly decreed by the learned trial court, he genuinely felt aggrieved and because of which, the

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learned first appellate court rightly accepted his first appeal, decreeing his suit in toto by way of impugned judgment and decree dated 24.8.2017. Having said that, this court feels no hesitation to conclude that the learned first appellate court was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 14 of its impugned judgment, which deserve to be noticed here, read as under:-

“A bare reading of agreement Ex.D1 dated 08/09/2009 would indicate that it is an agreement to execute gift deed for 33 sq. yards of land out of the total suit land in possession of the plaintiff, in favour of Mandir Shri Kshetrapal Ji Maharaj Naugawa. There cannot be any agreement to execute a gift deed. If there is an intention to give the property by the owner, then immovable property can be gifted by way of registered gift deed and not otherwise. Any gift deed is required to be registered if property worth more than Rs. 100 is sought to be gifted. Any agreement to execute take gift deed later on is not enforceable against the stated donor as per such agreement. Moreover, Ex.D1, is not registered as per the provisions of Registration Act, hence it would not confer any rights in favour of such donee. Further more agreement Ex.D1 is of 08/09/2009 and the plaintiff filed present suit on 25/09/2009 that is within a period of about 2 weeks of the said agreement. Hence, evidently he had no intention to honour the said agreement. It could not be shown that the other party that is the donee had changed his position in pursuant to the said agreement had incurred some expenditure on the passage sought to be left out by virtue of

agreement Ex. D1. It could not be shown that the plaintiff had parted with the possession of 33 yd.² of the land where after the other party of agreement Ex.D1 took over the possession and carved out a passage by incurring expenditure over the same to use the said agreement for collateral purposes. At the cost of repetition, it is observed that the defendants have admittedly no concern with the suit land. The defendants cannot take any benefit, even for collateral purposes, from the agreement Ex.D1, in question. Seen from another angle, if a person promises to gift any property but later on changes his mind then he cannot be forced to gift that property as promised earlier. In any case, any action for unfulfilled promise by the promisor can be initiated by the promisee only and not by the strangers. The defendants are stranger to the agreement Ex.D1. In pursuant to the said agreement, even they did not change their position to their detriment to take any benefit for any collateral purposes. Ld. Trial court fell into error while giving undue benefit to the defendants, while reading the recitals contained in agreement Ex.D1, and construing the same for collateral purposes. The plaintiff being co-sharer in exclusive possession of the suit property is entitled to relief of injunction against the defendants. The ratio of aforesaid authorities relied upon by Ld. Counsel for the defendants would not help his case being distinguishable to the facts of the present case. The findings of learned court below, on issue No. 1 are liable to be set-aside. Issue No. 1 is accordingly answered in favour of the plaintiff. The defendants are restrained to interfere in actual, peaceful and physical possession of the plaintiff over the suit property.

The entire case of the defendants-appellants was based on an alleged agreement to execute gift deed for land measuring 33 square yards by the plaintiff. Alleged agreement was dated 8.9.2009 (Ex.D1). It seems that plaintiff was being forced by the defendants to execute the gift deed qua

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the abovesaid suit land measuring 33 sq. yards. However, plaintiff did not succumb to the pressure of the defendants and without wasting any time, filed suit for permanent injunction within a period of two weeks which would clearly show that defendants-appellants had no case right from day one either on facts or in law. Neither the appellants were claiming ownership over the suit property, nor they were able to establish their possession thereon because it was the plaintiff who was the absolute owner in possession over the suit property, and this fact has, as a matter of fact, gone undisputed on record. In this view of the matter, it can be safely concluded that the learned first appellate court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld.

In the circumstances of the case, neither any estoppel would operate against the plaintiff-respondent nor he could have been forced to execute the gift deed to the extent of 33 square yards out the land owned by him. Neither law nor equity is in favour of the appellants. They had no concern with the suit land. No sanctity in law could have been attached to the agreement (Ex.D1) because the suit land was the absolute ownership of the plaintiff and he could not have been forced to execute any gift deed qua the suit land. In such a situation, no fault can be found with the cogent findings recorded by the learned first appellate court and the impugned judgment and decree deserve to be upheld.

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the abovesaid cogent and convincing finding recorded by the learned first appellate court. 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

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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 **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.

9.10.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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