

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

RSA-5-2017 (O&M)

Date of decision: 10.1.2017

Smt. Kamla and others

...Appellants/ plaintiffs

Versus

Jawahar Singh

...Respondent/defendant

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.SK Aggarwal, Advocate for the appellants

SNEH PRASHAR, J.

CM-18-C-2017

The present application under Section 5 of the Limitation Act has been filed for condonation of delay of 23 days in filing the appeal.

For the reasons enumerated in the application, the same is allowed and the delay is condoned subject to all just exceptions.

RSA-5-2017 (O&M)

The instant appeal has been filed assailing the judgment dated 20.8.2016 passed by learned Additional District Judge, Palwal upholding the judgment and decree passed by learned Civil Judge (Junior Division), Hodal by virtue of which the suit for permanent injunction in respect of the land comprised in Khewat No.90, Khatoni No.140, Rect. No.405, Killa No. 8(3-5) situated in Village Garhi Patti, Hodal, District Palwal (hereinafter referred to as “the suit land”) filed by

the respondent – plaintiff (hereinafter referred to 'the plaintiff') was decreed and he was held entitled to possession of the same as the appellants -defendants (hereinafter referred to 'the defendants') had taken forcible possession of the suit land during pendency of the suit.

Precisely, the facts are that the plaintiff claiming to be owner in possession of the suit land, pleaded that the defendants are co-sharers and in joint possession of the land comprised in Rect. No.405, Killa No.3/1, which is adjacent to the suit land. However, with a malafide intention, the defendants are bent upon to interfere into his ownership and possession and dispossess him illegally and forcibly from the suit land.

The defendants contested the suit. In the joint written statement filed by defendants No.1,2,7, 9 to 12, it was alleged that they had purchased the shares in the suit land i.e. 10/195th share vide sale deed dated 29.5.2000; 3/195th share vide sale deed dated 29.5.2000; 17/195th share vide sale deed dated 12.5.2000 and 7/195th share vide sale deed dated 19.5.2000. They were put in possession of their respective shares in the suit land purchased by them. They also alleged that the plaintiff had alienated major portion of the suit land to them and now under the garb of the instant suit, he intends to claim the valuable portion of the suit land but has no legal right to seek a restraint order regarding their possession or construction over the suit land.

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

- 1.) Whether the plaintiff is owner and in possession of the suit property and are entitled to injunction, as prayed for? OPP
- 2.) Whether suit is not maintainable in present form?OPD
- 3.) Whether the plaintiff has no cause of action and locus standi to file the present suit?OPD
- 4.) Whether the plaintiff has concealed the material facts from the Court? OPD
- 5.) Relief.

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

Considering the ocular and documentary evidence led by the parties and the submissions made on their behalf, learned trial Court decreed the suit in favour of the plaintiff vide judgment and decree dated 27.2.2015. Aggrieved against the judgment and decree, the defendants preferred an appeal, which was dismissed by learned First Appellate Court vide judgment dated 20.8.2016.

Feeling dissatisfied, the appellants-defendants preferred the instant Regular Second Appeal.

The submissions made by Mr.S.K.Aggarwal, Advocate representing the appellants have been considered.

The plaintiff prayed for an injunctive order against the defendants in respect of the suit land, of which he claimed to be exclusive owner in possession. On the other hand, the defendants alleged that they had purchased a major portion of the suit land by way of

various sale deeds and had been put in possession of the land purchased by them. As noticed by learned trial Court as well as by first appellate court, sale deeds Exs.P13 to P16 pertain to the shares sold by the plaintiff in the land forming part of Rect. No.405 Killa No. 3 (9-15). No document worth its name could be produced by the defendants to prove that they had any right, title or interest in Rect. No.405 Killa No.8 (3-5) i.e. the suit land.

Learned counsel for the defendants argued that the plaintiff had very cleverly cheated the defendants and had wrongly got recorded Rect.No.405 Killa No.3 instead of Rect.No.405 Killa No.8 in the sale deeds executed by him in favour of the defendants. This was not the plea of the defendants in their written statement. They could also not produce any evidence to substantiate their allegation of cheating. It was not one but four sale deeds executed by the plaintiff in favour of the defendants on different dates and vide all sale deeds share in Rect. No.405 Killa NO.3 had been purchased by the defendants. Not one of the sale deeds relates to Rect. No.405 Killa No.8 i.e. the suit land. Apparently, the plea of cheating raised by the defendants is nothing but an afterthought only to protect their illegal possession on the suit land, whereas the plaintiff is an exclusive owner of the suit land.

Learned trial Court as well as First Appellate Court found that the defendants had taken forcible possession of the suit land i.e. Rect. No.405 Killa No.8 during the pendency of the suit and therefore were liable to be ousted from the same. Accordingly, the plaintiff was

held entitled to recover the possession of the suit land.

Thus, there being no merit in the appeal and also there being no substantial question of law involved warranting intervention by this Court in the findings recorded by learned trial Court vide judgment and decree dated 27.2.2015, which were affirmed by learned First Appellate Court, the instant appeal is dismissed in limine.

Since, the main appeal has been dismissed, the miscellaneous applications are also dismissed.

10.1.2017
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No