

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.709 of 2017 (O&M)

Date of Decision: 14.11.2017

Kewal Ram

..Appellant

Vs.

Malkiat Ram and another

..Respondents

CORAM: HON'BLE MR.JUSTICE RAJBIR SEHRAWAT

Present: Mr.D.D.Sharma, Advocate for the appellant.,

RAJBIR SEHRAWAT, J.

1. This is second appeal filed by the plaintiff against the concurrent judgment and decree passed by the Courts below; whereby his suit for possession qua the residential suit property has been dismissed.

2. Brief facts of the case are that the appellant-plaintiff filed a suit claiming that he had purchased the land measuring 5 Marla comprised in Khewat No.219, Khatoni No.236, Khasra No.70//2(0-5); over which a residential house has been constructed. It is claimed that property was sold to him by his father; after a family settlement between the members of the family. The plaintiff became the owner of the said suit property by way of sale deed. However, the respondents-defendants have forcibly taken away possession of the suit property in his absence. He demanded the possession back. However, the respondents refused to hand over the possession, hence suit was filed.

3.

Upon notice, defendants appeared and filed written statement

taking routine preliminary objections. On merits, it was claimed by the respondents that previously father of the plaintiff and the defendants, namely, Chanan Ram was owner in possession of the suit property measuring 11 marlas and their father Chanan Ram raised the whole construction over the property mentioned above for the residential purpose. During his life time, Chanan Ram mostly resided in the house alongwith defendants. It was further pleaded that one room-*Baithak* was given to defendant No.1 only. It was further claimed that after the death of Chanan Ram, defendants are in peaceful possession of the suit property i.e. land measuring 5 marlas as well as one room-*Baithak*. It was further pleaded that even by a written memorandum dated 9.7.2005, the said room-*Baithak* was given by Chanan Ram to defendant No.1, Malkit Ram, in the presence of the attesting witness. Even the sale deed in favour of plaintiff was denied by the defendants. Still further, it was claimed that property in question i.e. *Baithak* is in exclusive possession of defendant No.1 being owner of the same. The *Baithak* is situated within the *Lal Lakir* and is not on numbered land, as is being claimed by the plaintiff. Therefore, it was claimed that plaintiff has no right title or concern with the constructed portion, i.e. *Baithak*-room.

4. Parties led their evidence.

5. After appreciating the evidence and hearing the learned counsel for the parties, trial Court dismissed the suit filed by the plaintiff and recorded a finding that plaintiff has failed to get the land demarcated so as to connect the same to the property claimed to have been purchased by him.

Therefore, the plaintiff has failed to substantiate his claim qua the residential house-*Baithak*. It was held that in the sale deed dated 12.9.2003

claimed by the plaintiff, no boundaries of the property are mentioned. Land mentioned in the sale deed is comprised only in Khasra No.70//2(0-5). It was further held that in the sale deed, there is no reference to any building-*Baithak*, as shown in the site plan. Still further, it was recorded by the trial Court that plaintiff himself has admitted that the room-*Baithak* is within the *Lal Lakir* of the village, whereas, the plaintiff claimed to have purchased the numbered land comprised in Khasra No.70//2(0-5). Therefore, trial Court held that plaintiff has failed to prove his title qua the residential portion/*Baithak*. Regarding possession also, the trial Court held that it has come on record that vide a mutual settlement in the year 1983, the alleged *Baithak* was given to defendant No.1. The same fact was stressed upon once again, in the memorandum dated 9.7.2005; executed by the father of the parties i.e. Chanan Ram. Chanan Ram used to reside with defendant No.1 only. Therefore, the possession is shown to be with the defendant; since long time. The trial Court also recorded that there is no explanation on the file shown by the plaintiff; as to when he came in possession of the *Baithak* and when he was dispossessed by the defendant.

6. Aggrieved against the judgment and decree passed by the trial Court, the plaintiff had appealed before the lower Appellate Court. However, the lower Appellate Court also dismissed the suit filed by the plaintiff-appellant herein. The lower Appellate Court also recorded a finding that the plaintiff himself has admitted in his cross examination that the *Baithak*-room falls within the *Lal Lakir* of the village. Still further, the Court held that the basic fact; required in the present case for the plaintiff to succeed; was the demarcation of the property in question; so as to connect

the residential portion of the property to the land claimed to have been

purchased by him through sale deed. However, the plaintiff did not take any steps to get the property demarcated. Hence, he has failed to substantiate his claim qua the *Baithak*-room, which he admitted, to be falling within the *Lal Lakir* of the village.

7. Having heard learned counsel for the appellant, this Court does not find any perversity in the findings recorded by the Courts below. A bare perusal of the cross examination of the plaintiff-appellant himself reveals that he has admitted in cross examination that the residential property falls within the *Lal Lakir* of the village, whereas, the plaintiff claims to be in possession of the suit property on the basis of sale deed executed in his favour by his father qua numbered land comprised in a particular Khasra No. The Courts below are right in arriving at the conclusion that the plaintiff has failed to connect residential portion to the land mentioned in the sale deed, because there is no mention of any residential property in the sale deed. Otherwise also, once the plaintiff admits the residential property to be situated within *Lal Lakir*, it excludes the property being part of any numbered land; which is claimed to have been purchased by the plaintiff from his father.

8. No other argument has been raised.

9. In view of the above, the present appeal is dismissed being devoid of any merits.

14.11.2017
Meenu

(Rajbir Sehrawat)
Judge

Whether speaking/reasoned - Yes/No
Whether Reportable - Yes/No