

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

RSA No.393 of 1993

Date of decision:- 19.02.2018

Bhag Singh and anr

...Appellants

Versus

Avtar Singh

...Respondent

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Navdeep Singh, Advocate,
for the appellants.

RITU BAHRI J. (Oral)

The present appeal has been filed by the appellant against the judgment dated 19.11.1992 passed by the Additional District Judge, Bathinda, whereby appeal of the plaintiff (respondent in the present appeal) had been accepted the appeal, ordering that suit filed by the plaintiffs is hereby dismissed against the judgment dated 01.12.1988 passed by the Senior Sub Judge, Bathinda.

Brief facts of the case are that, according to the plaintiffs, are that earlier Mohinder Singh son of Mukhtiar Singh was owner of the suit land which is said to be 18 marlas in area. Said Mohinder Singh sold the suit land to Niranjan Singh. Plaintiff as far back as on 26.06.1966 by way of Bahi Writing. The possession was also handed over by him to Naranjan Singh, Plaintiff. It is averred that Naranjan Singh later on sold about 4 marlas of land out of the suit land to Bhag Singh son of Dalip Singh on 26.06.1987, again through a Bahi writing. Both the plaintiffs have now filed the suit before the trial Court that they are owners and in possession of the suit land. The defendant has no concern with the same. The defendant wants

to oust them and interfere in their possession and hence the suit before the trial Court.

Upon notice, the defendant appeared and in his written statement denied if Mohinder Singh Son of Mukhtiar Singh was sole owner of the land in dispute. It was explained that he was mere a co-sharer in the suit land and that share was also sold to the defendant vide sale deed dated 25.08.1983. Mutation No. 12826 was also sanctioned in favour of the defendant on the basis of said sale deed. It was further explained by the defendant that he purchased the suit land from other co-sharers vide sale deeds No. 735 dated 13.07.1973, 70 of 20.04.1983 and 19 of 07.04.1983. Mutation Nos. 12805, 12724 and 12735 were also sanctioned in his favour on the basis of sale deeds mentioned above.

From the pleadings of the parties, following issues were framed:

- (i) Whether the plaintiffs are owners in possession of the suit land? OPP
- (ii) Whether the plaintiff is entitled to the injunction prayed for? OPP
- (iii) Whether the plaintiffs have no locus standi to file the present suit? OPD
- (iv) Whether the suit is not maintainable in the present form? OPD
- (v) Whether the property in dispute has not been properly described in the plaint? OPD
- (vi) Whether the defendants are owners in possession of the suit land? OPD
- (vii) Whether the defendant is entitled to special costs u/s 35A CPC? OP

(viii) Relief.

On the basis of evidence produced by the plaintiff as well as defendant, trial court dismissed the appeal of the plaintiff on the ground that the Ex. PX and Bahi writing Ex. P1 that the possession of the suit land was delivered by Mohinder Singh to Naranjan Singh, even though he was not entitled to alienate the entire land. The possession of the Naranjan Singh, therefore, shall be taken to be unauthorized and illegal on the suit land. .

Feeling aggrieved with the findings of the trial court, Avtar Singh filed the appeal before the appellate court.

Lower appellate court reverse the findings of the trial court with regard to issue Nos. 1 and 2 and held that revenue records patently makes it clear that all the co-sharers were in possession of the suit land and Mohinder Singh never remained in exclusive possession of any parcel of the suit land. The document Mark 'X' which determined the possession of the plaintiffs does not connect in any manner the suit property and rather shows that the defendant-appellant was in possession and Bant Singh and Gurnam Singh had not allowed him to uproot the case. In fact the appellant-defendant was in possession and Bant Singh and Gurnam Singh tried to interfere in his peaceful possession and on that account he lodged a complaint with the police on which Gurnam Singh and Bant Singh were challenged. Even all the Dws have specifically stated that the possession of the suit land which had been purchased by the appellants-defendants from the other co-sharers, was delivered to him and his fact is also reflected from the contents of the sale deed Ex.D1 to D4. Lower Appellate Court has rightly reversed the findings on issue Nos. 1 and 2.

Keeping in view the facts and circumstances, plaintiff (appellants

in the present appeal) who has alleged himself to be the owner in possession of the suit land, has not been able to connect this document with the suit property in any manner. Since the appellants have not been able to prove any right on the suit land and the respondent has been held to be the owner, no injunction could have been passed against the true owner. Hence, No illegality, much less perversity has been pointed out in the judgment of the lower appellate court, warranting interference by this Court.

No substantial question of law arises for consideration in this appeal.

Hence, appeal stands dismissed.

19.02.2018

Riya Grover

(RITU BAHRI)

JUDGE

Whether speaking/reasoned Yes
Whether reportable No