

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

**RSA No.2678 of 2012 (O&M)
Date of decision: May 22, 2018**

Sukhdev

...Appellant

Versus

Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajiv Joshi, Advocate
for the appellant.

Mr.Rajeev Sharma, Advocate
for respondent No.1.

Respondents No.2 to 5 proceeded ex-parte.

INDERJIT SINGH, J.

Appellant Sukhdev has filed this regular second appeal against Rani and other respondents, challenging the judgment and decree dated 21.09.2010 passed by learned Civil Judge (Junior Division), Jalandhar, whereby suit filed by the plaintiff-appellant for permanent injunction was dismissed and judgment and decree dated 18.04.2012 passed by learned Addl. District Judge, Jalandhar, vide which the appeal filed by the appellant was also dismissed.

Notice of motion was issued. Learned counsel for respondent No.1 appeared and contested the appeal. None appeared on behalf of respondents No.2 to 5 and they were proceeded ex-parte vide order dated

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that Darshan Singh plaintiff-appellant filed a suit against Rani and other defendants for declaration to the effect that the plaintiff is owner in possession of the plot measuring 829 sq. feet (26.9' x 31.0') and bounded as; East:House; West:Brij Lal; North:Street 5' and South: (nothing has been mentioned) and shown red in the site plan attached on the basis of agreement to sell dated 16.08.1999 and for permanent injunction restraining the defendants from interfering into peaceful and lawful possession of the plaintiff and dispossessing him from the suit land.

The case of the plaintiff is that he purchased the suit property from Brij Lal son of late Dhanna Ram vide agreement to sell dated 16.08.1999 for a valuable consideration of ₹38,000/- and possession of the suit land was taken over by him from said Brij Lal at the time of execution of the agreement to sell. However, Brij Lal died after few months of the execution of agreement to sell without executing the sale deed. After the death of Brij Lal, plaintiff requested defendants No.1 to 5 LRs of Brij Lal, to execute the sale deed in his favour but to no avail. It is further averred by the plaintiff that suit land was originally owned by one Dhanna Ram, father of Brij Lal and defendants No.2 to 5 and grand father of defendant No.1. Brij Lal died unmarried whereas Gurdial was married and was having a son, who is living with his wife. However, Gurdial has since died. It is further the case of the plaintiff that he is in possession of the suit land since the date of execution of agreement to sell dated 16.08.1999.

Defendant No.1 appeared and contested the case by filing

written statement, wherein she stated that property was purchased by

Dhanna Ram from Bihari and after the death of Dhanna Ram, his three sons namely Ram Lubhaya, Gurdial and Brij Lal, used to reside in the said property by raising kacha room. She is the only daughter of Ram Lubhaya, who died about 24-25 years back and she was brought up by her uncles Gurdial and Brij Lal, who were unmarried. Gurdial died unmarried about 9 years back, whereas Brij Lal died unmarried about 5 years ago. Defendants No.2 to 5 sold their shares and they are left with no right in the property. It is further the case of defendant No.1 that she is residing in the property in dispute since her birth and even after her marriage. After demolishing the kacha kotha, she and her husband raised pucca construction of rooms over some part of the property while some portion was lying vacant. In the month of June 2004, defendant No.1 raised boundary wall over the vacant property but plaintiff tried to create hurdles. She has also filed suit for permanent injunction which is still pending.

From the pleadings, following issues were framed:-

1. *Whether the plaintiff is entitled for declaration as prayed for? OPP*
2. *Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
3. *Whether the plaintiff has no locus standi to file the present suit? OPD.*
4. *Whether the site plan is wrong? OPD*
5. *Whether the plaintiff has no cause of action to file the present suit? OPD*
6. *Whether the plaintiff has not come to the court with clean hands? OPD.*
7. *Relief.*

Plaintiff examined himself as PW-1, PW-2 Nirmal Kumar and PW-3 Som Nath. On the other hand, defendant No.1 examined herself as DW-1 and DW-2 Jeet Ram.

Learned Civil Judge (Jr. Divn.), Jalandhar, vide impugned judgment dated 21.09.2010, dismissed the suit. An appeal was filed and learned Addl. District Judge, Jalandhar, vide impugned judgment dated 18.04.2012 dismissed the appeal also.

Aggrieved from the above-said judgments and decrees, present appeal has been filed.

From the record, I find that it is settled law that agreement to sell is neither a document of title nor creates any title in favour of the party. On the basis of agreement to sell, plaintiff cannot be declared as owner. Learned Civil Judge (Jr. Divn.), Jalandhar, while deciding issue No.1 has held that agreement to sell was of 16.08.1999. Further, the plaintiff has not given any plausible explanation for not getting the sale deed executed as per agreement to sell. Further, plaintiff has not produced any record to show that he made any efforts to get the sale deed executed in his favour after the death of Brij Lal. The Court below further held that the site plan produced on record, has not been proved by draftsman. I have also gone through the evidence produced before the lower Courts. The plaintiff has himself stated in chief-examination that agreement to sell is Ex.P1 and site plan is Ex.P2. He has nowhere stated as to who prepared the site plan and in whose presence; whether it was prepared while sitting in the office by someone at the instructions of the plaintiff or it was prepared by going to the spot. Even, in the chief-examination, it was not stated that this site plan is correct and as per the spot.

Further, I find that in the site plan, the dimensions have not been mentioned nor the dimensions have been given in the plaint. Even, in the head note, nothing has been mentioned as to whose property is on East

side. It is simply written 'house'. Regarding South, it was left blank. It is settled law that permanent injunction cannot be granted to a party on vague averments. If the suit property cannot be ascertained from the dimensions etc., then injunction cannot be passed, which may be difficult to enforce by the Court, if the order is violated. Therefore, in the present case, plaintiff also failed to prove the site plan as per law as he has not brought any person who has prepared the site plan nor plaintiff is saying that he himself has prepared the site plan. Otherwise also, from the evidence on record, the Courts below held that defendant Rani is in possession over the suit property. The Court also has not relied upon the photographs placed on the record by the plaintiff as the photographs itself will not prove the situation of the suit property. On the other hand, defendant has placed on record voter card as well as electricity bills to prove her possession. The oral evidence of the defendant is supported by documentary evidence.

The perusal of the reasonings shows that evidence has been appreciated in right perspective. In no way, the findings can be held as perverse or against the law. No substantial question of law arises in this regular second appeal. The findings given by learned Courts below are correct and as per law. There is nothing on the record to show that the judgments passed by the Courts below are perverse or against the law.

In view of the above discussion, I find that judgment and decree dated 21.09.2010 passed by learned Civil Judge (Junior Division), Jalandhar and judgment and decree dated 18.04.2012 passed by learned Addl. District Judge, Jalandhar, in appeal are correct and as per law and the same are upheld.

Therefore, finding no merit in the present regular second

appeal, the same is dismissed.

As the main case is decided, therefore, civil misc. application,
if any, also stands disposed of.

May 22, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

(INDERJIT SINGH)
JUDGE
Yes
No