

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

**RSA No.2692 of 2012 (O&M)
Date of decision: May 22, 2018**

Sukhdev

...Appellant

Versus

Rani

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Mr.Rajeev Sharma, Advocate
 for the respondent.

INDERJIT SINGH, J.

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

Notice of motion was issued. Learned counsel for the respondent appeared and contested the appeal.

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

From the record, I find that Rani plaintiff-appellant filed a suit

against defendant Sukhdev for permanent injunction restraining the defendant, his legal heirs, agents, attorneys etc., from interfering into peaceful possession of the plaintiff over the suit property shown in red and green in colour in the site plan attached as fully described in the head note of the plaint.

The case of the plaintiff is that property in dispute was an open space, which was purchased by Dhanna Ram from one 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. Both the said uncles of the plaintiff died unmarried about 9 years and 5 years back respectively. It is further the case of the plaintiff that since her birth and even after her marriage, she is residing in the property in dispute. After demolishing the kacha kotha, she and her husband raised pucca construction of rooms as shown green in the site plan and remaining property, shown in red colour in site plan, is open space. The plaintiff is having ration card in the name of her husband and electricity connection installed in the name of deceased uncle Gurdial. It is also the case of the plaintiff that defendant is residing opposite to the property of the plaintiff. He has got no right or concern with the property in possession of the plaintiff. On 27.06.2004, the plaintiff was raising boundary wall over the property but defendant, in connivance with other persons, forcibly entered the property of the plaintiff and demolished the boundary wall.

On the other hand, the case of the defendant is that plaintiff is

neither owner nor in possession of the suit land and not even, is the legal

heir of original owners Gurdial and Brij Lal. The suit property was originally owned by one Bihari Lal and the same was purchased by Dhanna Ram and from Dhanna Ram, it was inherited by his sons and daughters namely Ram Lubhaya, Gurdial, Brij Lal, Gejo, Debo, Tejo and Baksho Rani. The defendant had purchased 4 marlas out of the whole property of Dhanna Ram from Brij Lal and legal heirs of Dhanna Ram and is in possession of the same as per the agreement to sell. It is admitted that plaintiff had raised construction over the part of the suit land and it is denied that defendant is residing opposite to the property in possession of the plaintiff. It is further case of the defendant that he is in possession of his share of land which is part of the suit land and has nothing to do with the portion in possession of the plaintiff.

From the pleadings, following issues were framed:-

1. *Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
2. *Whether the plaintiff has not come to the court with clean hands and suppressed the material facts? OPD.*
3. *Whether the plaintiff has no locus standi to file the present suit? OPD.*
4. *Whether the plaintiff has got no cause of action? OPD*
5. *Relief.*

Plaintiff examined herself as PW-1, PW-2 Vidya Devi and PW-3 Thapar Pal. On the other hand, defendant examined DW-1 Som Nath, DW-2 Nirmal Kumar and examined himself as DW-3.

Learned Civil Judge (Jr. Divn.), Jalandhar, vide impugned judgment and decree dated 21.09.2010, decreed the suit filed by the plaintiff. An appeal was filed by the defendant-appellant and learned Addl. District Judge, Jalandhar, vide impugned judgment dated 18.04.2012 dismissed the appeal.

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

From the perusal of the record, I find that findings of fact that plaintiff Rani is in possession over the property in dispute has been given concurrently by both the Courts below by appreciating the evidence in right perspective. Nothing has been shown as to how the findings are perverse or against the law. Nothing has been shown as to which material evidence has been misread by the Courts. The perusal of the evidence on record shows that defendant is claiming his right on the basis of agreement to sell but no sale deed has been got executed within the limitation period by the defendant. Therefore, the defendant cannot be held as owner of the property on the basis of the agreement to sell as agreement to sell does not confer title. The vacant place is always treated to be in possession of the owner. Plaintiff Rani has duly proved by leading cogent evidence that she has constructed a house and residing therein. Electric connection is in the name of her uncle Gurdial Singh, who died as unmarried. The plaintiff also produced ration card etc., to show the possession. The plaintiff appeared in the witness box and deposed regarding her possession over the property in dispute. Other PWs have also supported her version. On the other hand, defendant has admitted that plaintiff is residing in the house but the defendant's case is that he is in possession of the open space on the basis of agreement to sell. This version of the defendant has not been believed by the Courts below on appreciation of the evidence. The oral statement of the plaintiff is supported by documentary evidence and the ownership of predecessor of the plaintiff is also admitted by the defendant.

The perusal of the reasonings given by the Courts below show

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.

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 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

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No