

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

RSA No.1448 of 2016 (O&M)

Date of decision:10.05.2018

Ram Singh (since deceased) through LR ... Appellant

Vs.

Kishan Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Dheeraj Mahajan, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit for possession of the suit property as per the area shown as green and purple in the appended site plan and from causing any obstruction of wall, had been dismissed by the trial Court and affirmed by the Lower Appellate Court.

Mr.Dheeraj Mahajan, learned counsel for the appellant-plaintiff submits that the suit was filed on the premise that property measuring 4 ½ biswas shown in yellow, green and purple colours within the red colour outline was originally owned by Malla Singh son of Gokal, Banta Singh son of Rulia, Arjan Singh son of Samundoo, Rallia son of Shamma, Gheechoo singh son of Partap Singh and Sunder Singh son of Dita and the same had been purchased by plaintiff alongwith Mal Singh and Amar Singh from its

original owners vide registered sale deed dated 29.1.1965. Mal Singh one of the vendees got his share partitioned by taking separate possession. There existed a bifurcated wall in between the separate portion/share of Mal Singh. Amar Singh, vendee and brother of plaintiff had died about 32 years back and after his death, his wife Bhagwanti sold her husband's 1/3rd share in the property shown as green and purple in colour alongwith the share of her husband in another property abutting towards northern side to Jagtar Singh and grandson of plaintiff, vide sale deed dated 26.01.2000. Jagtar Singh later on effected an exchange of the property purchased from Bhagwanti alongwith his own ¼ biswa abutting to northern side with the plaintiff and delivered the possession of the property and the entire consideration had been paid. Exchange was effected orally coupled with delivery of possession, which was later on acknowledged by exchange deed dated 20.11.2000.

The defendants who have no concern with any part of the site of his house were bent upon to demolish the said pucca wall due to party friction and succeeded in demolishing the said wall by forming a ground of miscreants. The plaintiff instituted the suit seeking injunction which was granted and thereafter, the application for amendment of the plaint was moved and the same was allowed. It is in this process, suit was filed claiming possession.

The defendants contested the suit by raising preliminary objections qua maintainability, locus standi and estoppel. On merits, they denied the possession of plaintiff over the disputed site. It was submitted

that alleged sale deed dated 29.01.1965 did not relate to the property in dispute nor Bhagwanti had any concern with the site. The alleged document dated 28.01.2000 and 20.11.2000 were said to be forged and fabricated. It was stated that in fact, there was a common pucca tharha about two feet in height towards southern-eastern side of the house of plaintiff.

Since the parties were at variance, the trial Court framed as many as 8 issues including the issue of Relief. Both the parties led the evidence in extenso. On the basis of preponderance of evidence, the Court below found that the appellant-plaintiff had not been able to prove the alleged possession of the suit property belonging to him and dismissed the suit. The appeal laid before the Lower Appellate Court also met with the same fate.

Mr. Dheeraj Mahajan, learned counsel appearing on behalf of the appellant-plaintiff submits that judgments and decrees of the Courts below are not sustainable in the eyes of law, for, defendants admitted the site plan which showed the possession has been sought. The evidence had been in terms of the pleadings in the plaint whereas the defendants failed to prove as to how and in what manner they were in possession and ownership of the suit property. The trial Court without any evidence on issue no.3 held that property belonged to Gram Panchayat. In the absence of any evidence that property belonged to Gram Panchayat, the finding should be treated as obiter. The title of the property had been proved by bringing on record exchange deed/sale deed and thus, urged this Court for setting aside the judgments and decrees under challenge.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Dheeraj Mahajan, for, in a suit for possession, particularly with regard to part of the property owned by the plaintiff, best piece of evidence to establish the unlawful possession of other side is the demarcation report. It was obligatory for the plaintiff to get the property demarcated. Having failed to do so, the alleged un-authorised possession of the defendants on the land belonging to plaintiff had not been proved. The draftsman who prepared the site plan, submitted that description of the property did not tally with the dimensions mentioned in the exchange deed as well as sale deed. In my view, the plaintiff has miserably failed to discharge the onus with regard to the alleged un-authorized possession, therefore, Courts below had rightly declined the relief. However, the finding on issue no.3, suit being bad for mis-joinder of the necessary party in the absence of non-impleadment of Gram Panchayat as party in the suit, for, such finding, in my view, prima facie would be treated as obiter.

The arguments of Mr. Mahajan, have not been able to bring the case within the realm of illegality and perversity enabling this Court to form different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 10, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No