

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

RSA No.1748 of 2016 (O&M)

Date of Decision: July 03, 2018

Mehar Singh

...Appellant

Versus

Randhir Deswal and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Surinder Singh Virk, Advocate for
the appellant.

HARINDER SINGH SIDHU, J.

The plaintiff has filed this Regular Second Appeal impugning the judgments of the courts below whereby his suit has been dismissed.

The plaintiff had filed a suit for permanent injunction for restraining the defendants from interfering in his peaceful settled possession over the plot marked by letters ABCD shown as red in the site plan annexed with the plaint. It was the case of the plaintiff that he had purchased the portion marked as AGFH as shown in the site plan from one Suresh Kumar vide registered sale deed dated 30.4.1986 and since then, he is owner in possession of the same. The portion marked as 'ABCD' abuts on the western side of his plot towards the main road. He has been using this portion since 1986 for the purpose of ingress and egress to the main road from this plot. Thus he had right, title and interest in the same. It was further pleaded that Suresh, the owner of the said plot, had in the year 1990 agreed to sell to him

the portion marked as 'DEFG' measuring 220 sq yards at the rate of Rs.160/-

per sq.yards. The plaintiff had paid him an amount of Rs.18,000/- as advance and since 1986, the plaintiff had been using the said plot as open yard. Suresh Kumar refused to execute the sale deed. Reference is made to various compromises and suits instituted by the plaintiff in this regard. Reference is also made to attempts made by alleged land mafia to dispossess the plaintiff from the said plot. When the defendants tried to dispossess the plaintiff relying on a fabricated and illegal sale deed dated 30.5.2007 and 23.1.2008, the plaintiff filed the present suit for the relief claimed therein.

The case of the defendants was that the plaintiff is a habitual litigant. He had filed various suits regarding the suit property and its adjoining property with intention to grab the valuable plot. Defendant Nos.3, 4 and 5 had purchased the plot vide sale deed bearing Vasika No.12329 dated 23.1.2008 from one Baljit Singh. Since the time of its purchase, they were in peaceful possession of the suit plot without interference of anybody else. It was pleaded that the plaintiff has no concern with the plot in question.

Learned trial court on the basis of evidence concluded that a perusal of the sale deed dated 23.1.2008, Ex.D-4 revealed that Sushma-defendant No.3 along with Smt. Raj Bala wife of defendant No.5 and Rajwanti had purchased a house consisting of two rooms, one kitchen, latrine, bathroom measuring 350 sq.yards bearing khasra No.2639/1 being 7/183 share of area 07 biswas situated at Raj Putan within Municipal Council, Panipat from Baljit Singh son of Shradanand for a sale consideration of Rs.8 lacs and possession of the same had been handed over

to them at the spot by Baljit Singh. Towards the east of the house, there is the house of the plaintiff, towards its west there is a canal, in the north and south, there are streets. As per Ex. D-3, copy of sale deed dated 30.5.2007, Baljit Singh had purchased the said house from Manish Kumar and Gulshan Kumar who in turn had purchased it vide sale deed dated 24.8.2004 (Ex.D-2) from Suresh Kumar. DW-1 Rajwanti and DW-2 Narender (defendant No.4) had deposed that Sushma, (defendant No.3) along with Raj Bala and Rajwanti had purchased the suit plot vide sale deed Ex.D-4 for a sale consideration of Rs.8 lacs and possession of the same had been handed over to them. DW-5 Baljit Singh also deposed regarding the sale deed Ex. D-4 and that he had earlier purchased the plot vide sale deed Ex.D-3 from Munish Kumar.

Learned Trial Court held that in these circumstances when the title and possession of the defendants was thus established it was incumbent upon the plaintiff who claimed to be in possession over the suit property to lead cogent and convincing evidence to prove his possession. Nothing of the sort had been done by the plaintiff. Accordingly, it was held that the plaintiff was not entitled to decree of permanent injunction and the suit was dismissed.

The learned lower appellate court affirmed the finding of the trial court. It was further held that as the defendants were owners in possession of the suit property by virtue of the sale deed Ex.D-2, Ex.D-3 and Ex.D-4 the plaintiff would have no right to seek permanent injunction against them.

Further a simplicitor suit of injunction filed by the plaintiff without the relief

