

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

RSA No.1921 of 2016(O&M)

Date of decision: 18.8.2018

Balaur Singh

....Appellant

VERSUS

Pishora Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Mohit Garg, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for permanent injunction restraining the respondent/defendant from taking forcible possession or interfering in peaceful possession of the plaintiff in the suit house bearing property No.B-XIII/63, detailed in head-note of the plaint, was dismissed by the trial Court and the appeal preferred by unsuccessful appellant/plaintiff did not find favour with the District Judge, Barnala.

At the outset, it is pertinent to mention that in response to order dated 07.08.2018 passed by this Court, counsel for the appellant has informed the Court that appellant is not ready to pay a sum of Rs.1,00,000/- and gold etc to the respondent/defendant in view of the writing dated 05.07.2011, relied upon by the respondent.

The appellant/plaintiff has claimed that he is owner of the suit house and is residing in the house in dispute since his birth. Water and sewerage connection has been issued in the name of the plaintiff in the suit

property. The dispute between the parties was settled with intervention of volunteers of Bahujan Samaj Party and compromise dated 15.09.1993 was executed vide which the appellant paid Rs.15000/- as cost of the house, Rs.300 as price of jewellery and Rs.2000/- as price of construction of the house in dispute. It is further averred that as per the said compromise, the respondent/defendant agreed that the plaintiff has become owner in possession of the suit property.

The respondent/defendant filed the written statement and raised preliminary objections inter alia locus standi of the plaintiff to file the suit; suit being without cause of action and bad for mis-joinder and non-joinder of parties. It is pleaded that suit property is ancestral property of the parties in which Kartar Kaur and Dilwar Kaur, their sisters also have a share. He has denied any such compromise dated 15.09.1993 having been arrived at between the parties. It is averred that on 05.07.2011, plaintiff entered into an agreement with the defendant to pay Rs.1,00,000/- in cash and 20 grams of gold in lieu of house in dispute.

Counsel for the appellant has not disputed findings of fact recorded by the Courts negating plea of the plaintiff to claim any right in the suit property on the basis of compromise dated 15.09.1993. However, it has been vehemently argued that even if the respondent/defendant is one of the co-owners in the suit house, he is not entitled to interfere in peaceful possession of the plaintiff/appellant except in due course of law. To substantiate his contention with regard to exclusive possession of the plaintiff/appellant, it is argued that in the head-note of the plaint, defendant has been shown to be resident of Garcha Road, Barnala, Tehsil and District Barnala. The respondent never raised an issue before the Courts that he is not resident of the place of which address has been given in the head-note

of the plaint, sufficient to show that the respondent/defendant is not residing in the house in question. It is further argued that the Courts have wrongly taken an adverse view against the appellant on the basis of alleged admission of the plaintiff that one of the front rooms of the house in question was given to the defendant after his marriage when he separated from the family after three months of his marriage when his father was alive. According to counsel, it is not the plea of respondent/defendant that any part of the suit house is under his lock and key when otherwise he has not disputed that he is residing at Garcha Road, Barnala but the suit house is situated in Sood Nagar, Sohian Wali Gali, Barnala.

I have heard counsel for the appellant, perused the paper-book and copies of documents supplied during the course of hearing.

Counsel for the appellant has not assailed findings of the Courts negating plea of the appellant that he has become exclusive owner of the suit house on the basis of writing dated 15.09.1993. As per the settled position in law, immovable property valuing more than Rs.100/- cannot be transferred except by way of a registered document. However, this Court is not oblivious of the fact that in a suit for injunction against forcible interference in possession, ownership of the suit property may not be an issue to be answered by the Court.

The appellant has tried to project a case that he is the absolute owner on the basis of writing dated 15.09.1993 and is in possession of the suit house to the exclusion of respondent/defendant. As soon as plea of the appellant with regard to his being the sole owner of the suit house is negated, as a natural corollary, the respondent/defendant would become co-owner of the suit house which was owned by his father who died after 5-6 months of marriage of defendant Pishora Singh.

Balaur Singh has not examined any witness to corroborate his version that he is in exclusive possession of the suit house. He even did not examine any witness to prove correctness of the site plan Ex.P1. As has been noticed by the Courts, in his cross examination he has admitted that Pishora Singh separated from his father three months after his marriage and he was given one front room in the house in question. Pishora Singh has raised a plea that he is in possession of half of the suit house which was given in partition by his father. Neither any plea has been raised by the appellant nor did he explain in his testimony that room of which possession was given to Pishora Singh during the lifetime of their father was surrendered by him (Pishora Singh). The aforesaid statement on the part of appellant falsifies and belies his plea that he is in exclusive possession of the suit house and is entitled to seek discretionary and equitable relief of injunction against his co-owner qua interference in possession of the house in question. The mere fact that Pishora Singh has not disputed his address given in head-note of the plaint is not sufficient to accept plea of the appellant that he is in exclusive possession of the suit house. In this view of the matter, I do not find an error much less perversity in the concurrent findings recorded by the Courts, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

AUGUST 18, 2018
‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no