

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

**RSA No.3373 of 2016 (O&M)
Date of decision: 19.02.2018**

Rishi Pal

.....Appellant

Versus

Shiv Lal and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Balraj Singh Rathee, Advocate,
for the appellant.

Ritu Bahri, J.

This appeal has been directed against the judgment of dated 15.03.2016 passed by the District Judge, Palwal, dismissing the appeal filed by plaintiff-appellant against the judgment & decree dated 15.05.2014 passed by the Additional Civil Judge (Senior Division), Hathin, whereby suit filed by him (plaintiff) for possession with consequential relief of permanent injunction, has been dismissed.

Plaintiff-appellant filed the aforesaid suit to the effect that he along with his brother Chandan Singh (proforma respondent No.4) was co-owner in possession of the property comprised in Khewat No.560, Khatoni No.612, Khasra No.528, total measuring 1 Kanal 2 Marlas, situated in village Manpur, Tehsil Hathin, District Palwal, to the extent of equal shares. It was submitted that about 20 years ago, an oral family settlement had taken place between the plaintiff and defendant No.4, by virtue of which, the latter had surrendered all his rights, title and interest in the suit property in favour of the plaintiff. Thereafter, he raised construction of his

residential house over the suit property. It was pleaded that plot of

defendant Nos.1 to 3 was adjoining the suit property. They (defendant Nos. 1 to 3) had raised construction of a house over the said plot. About 02 years prior to filing of the suit, they had approached the plaintiff and requested him to allow them to reside in some portion of his house i.e. the suit property for a period of six months, so that they could get constructed their residential house. On their request, plaintiff handed over possession of a portion shown as ABEF, out of the suit property to them on license for a period of six months. However, they did not raise any construction over their plot even after the expiry of period of six months. Thereafter, plaintiff asked defendant Nos.1 to 3 to hand over the vacant possession of the aforesaid portion, but they refused to do so. Hence, the suit.

Upon notice, defendant Nos.1 to 3 filed joint written statement by taking preliminary objections with regard to maintainability of the suit, cause of action, locus standi, estoppel etc. On merits, it was submitted that defendant No.1 had entered into an agreement dated 18.07.1988 with defendant No.4-Chandan Singh for purchase of $\frac{1}{2}$ share of Chandan Singh in the suit property. A sum of Rs.2500/- was paid as earnest money to defendant No.4. The sale consideration was fixed to be Rs.5000/- and the remaining amount was agreed to be paid on or before 15.06.1989. However, defendant No.1 had paid the balance amount to defendant No.4 on 19.08.1988 and on the same day, physical possession of $\frac{1}{2}$ share in the suit property was delivered by defendant No.4 to defendant No.1. As the parties were having faith in each other, therefore, the sale deed was not got registered. Thereafter, defendant No.1 raised construction of his house over $\frac{1}{2}$ share of the suit property comprised in Khasra No.528. Since then, he had been residing therein with his sons i.e. defendant Nos.2 and 3 and other

family members. All other allegations levelled in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to decree for possession with respect to suit property as alleged? OPP
2. Whether the plaintiff is entitled to decree for permanent injunction restraining the defendants no.1 to 3 from raising any construction over the disputed portion as alleged? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Heard.

The case of defendant Nos.1 to 3 was that as per agreement to sell dated 18.07.1988 Ex.D1, defendant No.4, who was co-sharer in the suit property, had sold half share in the said property to them and thereafter, they have become owners thereof. D.K. Bhardwaj, Handwriting and Fingerprints Expert (DW-5) deposed that he had examined the disputed signature, alleged to be that of defendant No.4 and affixed on Mark D-1 which was copy of sale deed dated 18.09.2012 kept in the office of Sub-Registrar, Hathin with his admitted signatures on the back side of first page of the agreement Ex.D1. As per his opinion, both these signatures were put by one and the same person. He also proved his report Ex.DW-5/B and photograph Ex.DW-5/C. The suit of the plaintiff (appellant) has been dismissed on the ground that defendant No.4 has never appeared as witness to support the case of plaintiff. Even though, he had filed written statement in support of

the plaintiff, but he did not appear as a witness. Agreement Ex.D1 was executed between defendant Nos.1 to 3 and defendant No.4. Defendant No.4 had not challenged the above said sale Ex.D1 and Receipt Ex.D2. Even the plaintiff had admitted in his cross-examination that defendant No.1 had been residing in the suit property for the last 28 years. No suggestion was given to DW-1 that he had not been residing in the suit property since 1988.

Keeping in view that possession of defendant-respondent Nos.1 to 3 over the suit property was for the last 28 years and Chandan Singh- defendant No.4 (vendor), who was having half share in the suit property, did not appear in the witness box to support the case of the plaintiff, suit of the plaintiff deserved to be dismissed. After going through the impugned judgments, this Court is of the view that plaintiff-appellant has failed to lead any cogent and convincing evidence to prove his case. Accordingly, his suit has rightly been dismissed by the Courts below. No illegality, much less perversity, has been found in the findings given by the Courts below, which may warrant interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Resultantly, finding no merits, the present appeal is dismissed.

19.02.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No