

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.2391 of 2015 (O&M)

Date of decision: 23.04.2018

Harvinder Singh

..... Appellant

Versus

Dalbir Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sukhbir Singh, Advocate
for the appellant.

Mr. Chetan Bansal, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

In the considered opinion of this Court, the following question which needs determination:-

“Whether the successor-in-interest is entitled to plead and prove his possession on the basis of a judgment passed in favour of his predecessor-in-interest”?

Undisputed facts are that Sukhpal Singh had sold certain property in favour of Pritpal Singh and Sukhjinder Singh sons of Surat Singh. Pritpal Singh and Sukhjinder Singh filed a suit for permanent injunction and declaration that they are owners in possession. The suit filed by them was dismissed. However, in appeal relief qua declaration of ownership was not granted but decree for permanent injunction was passed

in their favour vide judgment and decree dated 29.05.1986. The plaintiff claims that he has purchased the property from the aforesaid Pritpal Singh and Sukhjinder Singh vide registered sale deed dated 12.10.1989. The possession of the plaintiff was threatened forcing him to file a suit for declaration and permanent injunction. It may be noticed that relief of declaration has already been given up by the appellant by making a statement before the learned First Appellate Court. Hence, the only issue which needs determination is whether the plaintiff-appellant is entitled to permanent injunction or not.

It is further not in dispute that earlier judgment passed by the learned First Appellate Court on 29.05.1986 in a suit filed by Pritpal Singh and Sukhjinder Singh has become final between the parties. In the previous litigation, predecessor-in-interest of the plaintiff-appellant were held to be in possession of land measuring 2 kanals and 8 marlas comprised in Khasra No.1189 (Min). The defendant when appeared in the witness box has admitted that the land in question is same as it was involved in the previous judgment. There is no evidence available on the file that after the judgment dated 29.05.1986, predecessor-in-interest of the appellant were ever evicted from the possession. The learned First Appellate Court has refused to grant injunction on the ground that there is no evidence of delivery of possession in favour of the appellant, hence, the exclusive possession of the plaintiff is not proved. The learned First Appellate Court has also held that since other co-sharers are not party, therefore, the suit is not maintainable.

In the considered opinion of this Court, both the reasons assigned are erroneous. The possession of the predecessor-in-interest of the plaintiff-appellant is proved from the previous judgment dated 29.05.1986.

The predecessor-in-interest of the plaintiff-appellant thereafter sold the property to the plaintiff vide registered sale deed dated 12.10.1989. It is specifically recorded in the aforesaid sale deed that the possession has been delivered to the plaintiff-appellant. The sale deed is a registered document. The predecessor-in-interest of the plaintiff are not disputing delivery of the possession to him.

In view thereof, the learned First Appellate Court erred in recording that there is no evidence of delivery of possession to the plaintiff or exclusive possession of the plaintiff.

Even the second reason assigned by the Court that all the co-sharers are not party is also erroneous. The plaintiff now is confining his relief only to grant injunction to protect his possession. The plaintiff is not required to implead all the co-owners as party defendant. It is sufficient for the plaintiff to implead only those co-owners from whom he has any threat of his forcible possession.

In view of the aforesaid, question as framed earlier, is answered in favour of the appellant.

Hence, the judgments passed by the Courts below are set aside. The decree for permanent injunction is passed in favour of the plaintiff.

The parties would be at liberty to move before the Competent Authority for partition of the land.

Regular second appeal is allowed.

23.04.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No