

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

RSA No. 395 of 2016(O&M)

Date of decision: 23.10.2018

Jaspal Singh

.....Appellant

VERSUS

Harjit Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.S. Sekhon, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for permanent injunction restraining the respondents/defendants from interfering in peaceful possession of plaintiff over suit land measuring 15 kanal 16 marlas bearing khasra No.58M//11/2(3-16), 20(8-0), 21/1 (4-0) Khewat No.283/244, khatoni No.331 situated in the area of village Bare Ke, Tehsil and District Ferozepur as shown in Jamabandi for the year 2010-11 was dismissed by the trial Court vide judgment and decree dated 11.09.2014 that came to be affirmed in appeal by the Additional District Judge, Ferozepur.

The plea of the plaintiff/appellant is that respondents/defendants entered into agreement to sell suit land along with other land in favour of father of the plaintiff and executed agreement to sell dated 22.03.1993 in favour of his father. The defendants delivered possession of suit land to the plaintiff and his father on the date of agreement to sell and since then they are in possession. The plaintiff along with his father constructed a residential house in suit land and are living together. The sale deed on the basis of agreement to sell is to be executed

by the defendants on final decision of case pending between the defendants and Balbir Singh son of Santa Singh in whose favour defendants and their father executed another agreement to sell regarding suit land and some other land.

The Courts have consistently noticed that evidence on record both oral and documentary is not sufficient to substantiate plea of the appellant that he is in possession of suit land and entitle to seek injunction against interference and encroachment by the respondents/defendants. Indisputably, the agreement of sale which is the star document relied upon by the plaintiff to prove possession over suit land has not been proved in accordance with law. Even the original agreement of sale has not seen light of the day and only a photocopy thereof was marked on record. The appellant has also relied upon entries in khasra girdawaris changed on the basis of rapat No.509 dated 20.03.1996. Rapat No.509 dated 20.03.1996 was not produced on record and application for additional evidence to prove that document was dismissed by the Additional District Judge. Counsel for the appellant has failed to make any meaningful submissions to assail order passed by the Appellate Court dismissing application seeking permission to adduce additional evidence qua rapat No.509 dated 20.03.1996. This apart, the aforesaid rapat is not per se admissible in evidence and needs to be proved in accordance with law. No such prayer was made by the appellant to examine a witness to prove the aforesaid rapat even by way of additional evidence. The second application for adducing additional evidence to prove aforesaid rapat is not maintainable. In the given scenario, the appellant cannot derive any advantage to his contentions from entry in column No.21 of khasra girdawari Ex.PE. This

apart, as per rapat No.509 dated 20.03.1996 that finds mention in column No.21, the change was made in the name of Jaspal Singh to the extent of 2/3rd share and Harnek Singh qua remaining 1/3rd share but counsel for the appellant has fairly informed that Harnek Singh has nothing to do with the agreement of sale of 1993 propounded by the appellant/plaintiff. In jamabandi for the year 2010-11, there is an entry with regard to possession of suit land to the extent of 2/3 share in favour of Jaspal Singh and 1/3 share in favour of Mehal Singh. Again, there is no explanation as to how an entry with regard to 1/3 share has been recorded in favour of Mehal Singh. Even the remarks column of this jamabandi does not show as to on what basis, this entry was made for the first time in Jamabandi for the year 2010-11. Failure of appellant to prove the agreement of sale coupled with contradiction in revenue records, the Courts have rightly refused to rely upon the documentary evidence in support of plea that appellant is in possession of suit land. In this view of the matter, I do not find an error much less perversity in findings recorded by the Courts, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. All miscellaneous applications are deemed to be disposed of.

OCTOBER 23, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no