

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

**R.S.A No.3458 of 2015 (O&M)
Date of decision :05.07.2018**

Gurdev Singh

..... Appellant

Versus

Balwinder Singh and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Ramneek Vasudeva, Advocate
for the appellant.

LISA GILL,J

CM No. 8374-C of 2018

Prayer in this application is for condonation of delay of 38 days in re-filing the appeal.

Heard.

For the reasons mentioned in the application and arguments addressed, the application stands allowed and the delay of 38 days in re-filing the present appeal is hereby condoned.

Application is accordingly disposed of.

R.S.A No.3458 of 2016 (O&M)

Appellant-defendant is aggrieved of judgment and decree dated 29.07.2013, passed by the learned Additional Civil Judge (Sr. Division), Rupnagar, as well as judgment and decree dated 22.09.2014,

passed by the learned Additional District Judge (FTC), Rupnagar, whereby appeal filed by the present appellant has been dismissed.

Respondent-plaintiffs filed a suit for permanent injunction for restraining the present appellant-defendant from interfering in the peaceful possession of the respondents-plaintiffs over the suit property i.e. part of Taur measuring 5 Kanals – 19 Marlas in village Silo Masko, Tehsil Chamkaur Sahib, District Rupnagar. Case of the plaintiffs was that the suit property was originally owned and possessed by one Roshan Lal Chadha son of Lala Pirthi Chand. Roshan Lal Chadha had migrated from Pakistan at the time of partition. Property in dispute alongwith other properties was allotted to Roshan Lal Chadha. Mewa Singh son of Chuhar Singh, grandfather of the plaintiffs alongwith Khushal Singh of village Kheri Salabatpur, purchased the property allotted to Roshan Lal Chadha. It was further averred that Mewa Singh died in the year 1985 and his property was inherited by Nirmal Singh and Dara Singh in equal shares. Khushal Singh also surrendered his possession in favour of Mewa Singh. Nirmal Singh and Dara Singh, both passed away. In a family settlement during the lifetime of Nirmal Singh, the property in dispute fell to the share of Dara Singh. Plaintiffs alongwith one Bagga Singh claimed to be owners in possession of the property in dispute on inheriting it from Dara Singh on his death in 1999. Plaintiffs and Bagga Singh are sons of Dara Singh. It was averred that the present appellant-Gurdev Singh has no right, title or concern with the property in dispute, but in connivance with their enemies, tried to take forcible possession of the property in dispute. Complaint had been made before Police Station Chamkaur

Sahib, but no action was taken. Thus, the present suit.

Appellant-defendant contested the suit, taking a number of preliminary objections regarding locus-standi, maintainability, concealment of material facts as well as alleging that he (appellant-defendant) was the owner in possession of the property in question. It was further averred that in a family settlement dated 09.06.1986, the land in question was given to Nirmal Singh and the plaintiffs had no concern with the property in question. With these pleas, appellant-defendant pleaded for dismissal of the suit.

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

1. Whether the plaintiffs are in possession of the suit property?OPD
2. If issue no.1 is proved, whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?OPP
3. Whether the plaintiffs have no locus standi to file the present suit?OPD
4. Whether the plaintiffs have concealed the material facts from the Court, if so its effect?OPD
5. Whether the suit is not maintainable in the present form?OPD
6. Relief.

Learned trial Court after considering the evidence on record concluded that the plaintiff-respondents succeeded in proving their case, thereby decreed the suit in favour of the plaintiffs vide judgment and decree dated 29.07.2013.

Appeal filed by the appellant-defendant was dismissed by the learned Additional District Judge (FTC), Rupnagar on 22.09.2014. Aggrieved therefrom present appeal has been filed.

Learned counsel for the appellant-defendant vehemently

argues that both the learned Courts below have not considered compromise dated 28.03.1986 (Ex.D-4) in a correct perspective. The land which was given to Nirmal Singh and his brother Dara Singh is clearly mentioned. Property in dispute fell to the share of Nirmal Singh, where he and his children are residing. Reference is also made to subsequent decree dated 21.07.1986 (Ex.D-3) on the basis of the settlement, to buttress his arguments. Appellant-defendant claims to be the owner in possession of the suit land on the basis of an agreement dated 07.08.2008 (Ex.D-5). The said agreement is stated to be entered in by the appellant with one Didar Singh, Lakhbir Singh, Kulvir Singh sons of Baljit Singh and Mohinder Kaur wife of Baljit Singh, Kuljit Singh and Daljit Singh, sons of Ujjaggar Singh; besides Labh Kaur widow of Ujjaggar Singh. It is thus prayed that both the impugned judgments and decrees dated 29.07.2013 and 22.09.2014, passed by the learned Additional Civil Judge (Sr. Division) and Additional District Judge (FTC), Rupnagar, be set aside and the suit filed by the respondent-plaintiffs be dismissed.

I have heard learned counsel for the appellant and gone through the file as well as the record, which is furnished by the learned counsel in Court today.

It is to be noticed that in his written statement, the appellant-defendant took a categorical stand that the suit property is owned by Nirmal Singh, whereas in evidence he tried to prove that the suit land is owned by him on the basis of the agreement (*Ikrarnma Kabza Jagha* dated 07.08.2008). Apart from the fact that it is in contradiction to his pleadings, the said agreement is an unregistered document and a mere

agreement in any case cannot confer the title upon any party. It is specifically observed by the learned trial Court that the attesting witness of this document dated 07.08.2008, Gurbachan Singh,DW-2, stated that no such document was prepared in his presence. DW-4-Jagga Singh an attesting witness of the so called agreement did not know the vendor. DW-5-Labh Kaur, one of the alleged vendor clearly states that she never executed any sale deed in favour of defendant-Gurdev Singh. It is further not in dispute that agreement relied on by the defendant was cancelled vide endorsement dated 12.09.2008.

Learned trial Court has rightly observed as under:-

“Admittedly the suit land was owned by Mewa Singh and after his death, the same was inherited by Nirmal Singh and Dara Singh. Plaintiffs have alleged that a family settlement has taken place between them and the legal heirs of Nirmal Singh and the suit property was fallen to their share. Defendant has also taken a plea that Nirmal Singh and his children are residing in the said house. If the plaintiffs are in wrongful possession over the suit property, then the LRs of Nirmal Singh are the aggrieved party. But, they have not filed any suit against the plaintiffs. Defendant could examine them. They, if had any grievance against plaintiffs, could appear into the witness box to depose that they are the owner of the suit property and plaintiffs have encroached their property, but they were not examined by the defendant. Plaintiffs have succeeded in proving their ownership and possession over the suit property.”

Defendant does not deny that the land in question was originally allotted to Roshan Lal Chadha after partition. It is further admitted that Mewa Singh, grandfather of the plaintiffs become the

owner in possession of the property after the sale deed dated 15.05.1956. The defendant-appellant has himself produced on record compromise dated 28.03.1986 (Ex.D-4) and alleged that in the said compromise, the suit land is stated to be given to Nirmal Singh and his brother i.e. the settlement between Nirmal Singh and Dara Singh. Learned trial Court has rightly held that the suit land was owned by Mewa Singh and after his death was inherited by Nirmal Singh and Dara Singh. Family settlement took place between the legal heirs. It is the case of the defendant himself that family settlement took place between them. Therefore, contention on behalf of the appellant-defendant that the suit for permanent injunction should not have been decreed as he (defendant) is proved to be the owner in possession, is clearly untenable. Learned appellate Court has considered all the pleas raised by the appellant and has dismissed his appeal vide a detailed and well reasoned judgment.

No other argument has been raised.

Learned counsel for the appellant-defendant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Impugned judgments are well reasoned judgments rendered after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decree dated 29.07.2013 and 22.09.2014 passed by the learned Addl. Civil Judge (Sr. Division) Rupnagar and learned Additional District Judge (FTC) Rupnagar, respectively, which warrant any

interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

July 05, 2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No