

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

**RSA No.5036 of 2016 (O&M)
Date of Decision.08.05.2018**

Girdhari and another

.....Appellants

Vs

Kans Raj

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Alka Sarin, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

C.M. No.13077-C of 2016

The application for impleading the legal representatives of deceased-Dhian Singh is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

RSA No.5036 of 2016

The appellants-defendants are aggrieved of the concurrent finding of fact whereby the suit of the respondent-plaintiff claiming permanent injunction by restraining the appellants-defendants, their agents, servants, assignees or representatives from interfering into any manner and from dispossessing the plaintiff from the land measuring 7 kanals 3 marlas comprised in Khewat No.388, Khatauni No.622, Rect. No.52, Killa No.11/2 (4-0), 12/2 (3-3), situated in the revenue estate of village Paniar, Hadbast No.313, Tehsil and District Gurdaspur has been allowed by the trial Court and affirmed by the lower Appellate Court.

Ms. Alka Sarin, learned counsel appearing on behalf of the appellants submitted that the suit aforementioned was filed on the

premise that the plaintiff had purchased the land from Darbara Singh son of Jagat Singh vide sale deed which had not seen light of the day but claimed possession of the suit property since 30.10.1992. It also came on record that Darbara Singh had purchased the property from Udham Singh. The appeal is accompanied by application bearing No.13079-C of 2016 under Order 41 Rule 27 CPC read with Section 151 CPC seeking leave of the Court to place on record the judgment dated 09.08.1996 rendered in civil suit bearing No.433, R.BT. No.164 wherein the appellants-defendants instituted the suit as plaintiffs for possession of half share of land measuring 7 kanals 3 marlas against Darbara Singh, Hardial Singh and Kans Raj for setting up plea that they have become owners by efflux of time as the plaintiffs had not lost right of redemption. The suit aforementioned was dismissed by holding that the remedy was to seek redemption.

The trial Court in the absence of prayer of possession has decreed the suit by injuncting the appellants-defendants and therefore, the respondent-plaintiff had been put in possession of the property as owner, which has been affirmed by the lower Appellate Court. There is illegality and perversity, for, both the Courts below ought to have rendered the finding on the issue which was framed with regard to injunction and possession. There is no limitation for seeking redemption of the property in view of the judgment rendered by Hon'ble Supreme Court in **Singh Ram (dead through Lrs) Vs. Sheo Ram and others AIR 2014 SC 3447**. The plaintiff has miserably failed to prove his long and settled possession to bring the case within the ratio decidendi culled out by Hon'ble Supreme Court in **Rame Gowda**

(D) by LRs Vs. M. Varadappa Naidu (D) by LRs (2004) 1 SCC 769,

thus, urges this Court for setting aside the judgments and decrees under challenge.

There is caveat filed by Mr. Dinesh Mahajan but there is no representation. Accordingly, I proceed to decide the appeal as it is listed for preliminary hearing.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Ms. Alka Sarin except vis-à-vis that finding given by the trial Court in para 12 granting injunction in the capacity of ownership. Though the pith and substance in the suit for claiming injunction from the defendant had been that plaintiff had purchased the land from Darbara Singh but no copy of the sale deed or ownership of Darbara Singh or Udham Singh, had not seen the light of the day. Revenue record placed on record established the status of Darbara Singh as mortgagee. It is not in dispute that the mortgagee right can be purchased but was also obligatory on the part of the plaintiff to prove the same in accordance with law. The finding rendered by the Courts below injuncting the appellants-defendants from interfering into peaceful possession is only on the basis of long and settled position, which is acknowledged in the *ratio decidendi* culled out by Hon'ble Supreme Court in **Rame Gowda's case** (supra).

However, the trial Court in para 12 while giving the conclusion observed as under:-

“12. From the perusal of the evidence led by both the parties discussed above, the plaintiff is proved to be in possession over the suit property in his capacity as

owner thereof. Perusal of the copy of the sale deed in favour of the plaintiff (Ex.P1) goes on to show that the plaintiff has purchased the suit property from Darbara Singh son of Jagat Ram on 30.10.1992 and ever since then plaintiff is in possession of the suit land so purchased by him. Jamabandi for the years 1982-83 (Ex.P3) reflects that vendor of plaintiff namely Darbara Singh had purchased the suit property from Udham Singh. After purchase of the suit land by the plaintiff his ownership and possession was duly entered into the jamabandi for the years 1992-93 (Ex.P2). Even possession of the plaintiff was duly reflected in the khasra girdawari from 1992-93 upto years 2008-09 (Ex.P5).”

I am of the view that finding of trial Court with regard to possession over the suit property cannot be tinkered with but *vis-a-vis* the capacity as owner, it would be an obiter, for, the parties were not called upon to lead evidence in the absence of issue of ownership.

In the judgment sought to be placed on record by way of additional evidence as Annexure A-1, following issues were framed:-

- “1. Whether the plaintiff is owner of the suit land to the extent of ½ share? OPP*
- 2. Whether the plaintiff is entitled to possession on the facts as alleged? OPP*
- 3. Whether the plaintiff has no locus standi to file the present suit? OPD.*
- 4. Whether the suit is not maintainable in the present form? OPD*

5. *Relief.*”

The trial Court decided issue No.1 in favour of the plaintiff, in essence, the plaintiff was held to be owner of the property.

With the aforementioned observations, I am of the view that judgment and decree vis-a-vis the injunction is most innocuous and do not fall within the realm of illegality and perversity, much less, argument of Ms. Sarin has not been able to cut ice enabling this Court to form a different opinion than the one already arrived at by the Courts below. It is made clear that the finding of possession on the basis of ownership would be read as an obiter. Rest of the findings under challenge are upheld.

With the aforementioned observations, the second appeal stands disposed of.

(AMIT RAWAL)
JUDGE

May 08, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No