

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

RSA No. 6068 of 2016 (O&M)

Date of decision : September 26, 2018

Didar Singh

.....Appellant

Versus

Pappu and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Yogesh Goyal, Advocate
for the appellant.

LISA GILL, J.

Appellant – plaintiff is aggrieved of the concurrent findings rendered against him by the learned Civil Judge (Senior Division), Kapurthala vide judgment and decree dated 07.05.2015 as well as learned District Judge, Kapurthala vide judgment and decree dated 25.01.2016 and consequential dismissal of his suit.

Appellant – plaintiff filed a suit for possession of land measuring 9 kanal 19 marlas as detailed in the plaint. It was pleaded that the plaintiff is in possession of the said land, which was purchased from the father of the defendants namely Piara Singh for a sum of ₹7,000/- on 12.12.1985 in the presence of witnesses. Therefore, the plaintiff claimed to have become an absolute owner in possession of the suit land. It was further pleaded that Piara Singh father of the defendants received a sum of ₹7,000/- from the plaintiff as loan and executed a pronote besides a receipt in favour of the plaintiff on 12.12.1985 but Piara Singh did not repay the amount to the plaintiff taken as loan despite requests. The defendants, it was pleaded, stated that they were not in a position to return the amount and the plaintiff was asked to jointly cultivate the land in question. The produce would be

divided into two parts and one would be given to the plaintiff. Accordingly, the plaintiff started cultivating the suit land but the defendants did not pay a single penny to the plaintiff. With a malafide intention defendants took the possession of the suit land and started cultivating it and were in illegal possession of the same for the last four years. Hence, the suit was filed.

Suit was resisted by the defendants. Written statement was filed taking various preliminary objections. Averments on merits were controverted while stating that the suit land was owned by the defendants and they had inherited the same from their forefathers and plaintiff never came in possession of the suit land at any point of time. Alleged agreement, if any, is forged, fabricated and was never executed in favour of the plaintiff. Dismissal of the suit was prayed for.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the plaintiff is entitled to possession of the land measuring 9 kanal 19 marlas, as mentioned in the head note of the plaint?OPP.
- ii) Whether the suit is not maintainable in the present form?OPD
- iii) Whether the plaintiff has got no cause of action or locus standi to file the present suit? OPD.
- iv) Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.
- v) Whether the plaintiff has come to the Court with clean hands, if so, its effect?OPD
- vi) Whether the plaintiff has concealed the material facts from the court, if so, its effect?OPD
- vii) Whether the suit is time barred? OPD
- viii) Whether the suit has not been properly valued for the purpose of court fee and jurisdiction?OPD
- ix) Relief.

Evidence was led by both the parties.

Learned trial Court dismissed the suit filed by the plaintiff vide judgement and decree dated 07.05.2015. It was specifically concluded that the plaintiff failed to prove the case set up by him and was unable to prove his ownership or possession over the suit property. Appeal filed by the appellant was also dismissed by the learned District Judge, Kapurthala vide judgment dated 25.01.2016. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant argues that consideration for the land in question had been duly received by father of the defendants way back in the year 1985. It is the right of possession of the land purchased by the appellant, which was being sought. The present suit was confined to the relief of possession and for protecting the possession of the plaintiff. Therefore, both the learned courts below have erred in dismissing the suit filed by the appellant – plaintiff while holding that he failed to prove his ownership over the suit property. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 07.05.2015 passed by the learned Civil Judge (Senior Division), Kapurthala and judgment and decree dated 25.01.2016 passed by the learned District Judge, Kapurthala be set aside and suit filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and have perused the file with his able assistance.

It is not in dispute that the entire case of the appellant – plaintiff is based upon the so called agreement dated 12.12.1985 (Ex.P1). Ex. P1 is not a document indicating sale or even an agreement to sell of the land in question. It is specifically observed by the learned District Judge

that Ex. P1, which deals with relinquishment of possession is silent about the sum of ₹7000/-, allegedly paid as consideration by the plaintiff.

Learned counsel for the appellant is unable to deny that PW1 i.e. the appellant in his cross examination has admitted that ownership of the land in dispute vests with the Central Government as per Jamabandi Ex. PA/1. The Central Government is not even arrayed as a party to the suit. It cannot be denied that the appellant has not led any evidence on record in order to prove his possession. There is not an iota of evidence on record to indicate as to when possession of the suit land if at all was handed over to him. PW1 does not mention when he came in possession of the suit land and when he was again dispossessed by the respondents as alleged in the plaint. As per the revenue record, name of the father of the respondents is incorporated in the column of possession of the suit land. The appellant pleaded that he had purchased the land in question (its possession) from the father of the defendants for a sum of ₹7,000/- as reflected in Ex.P1 dated 12.12.1985. The appellant while deposing before the learned trial Court has admitted that the defendant's father is recorded to be in possession as per the revenue record. In the factual matrix of the case, learned trial Court has rightly dismissed the suit filed by the appellant – plaintiff.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any

illegality and infirmity in impugned judgment and decree dated 07.05.2015 passed by the learned Civil Judge (Senior Division), Kapurthala as well as judgment and decree dated 25.01.2016 passed by the learned District Judge, Kapurthala which calls for any interference by this Court.

There is a delay of 37 days in re-filing and 66 days in filing of the present appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is, accordingly, disposed of.

Accordingly, this appeal is dismissed with no order as to costs.

September 26, 2018
rts

(Lisa Gill)
Judge

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