

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

**RSA No.6182 of 2016 (O&M)
Date of Decision.16.11.2018**

Kashmir Singh

...Appellant

Vs

Dalbir Kaur and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. V.K. Sandhir, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff has not been successful seeking injunction against the defendants qua forcible dispossession and interference in respect of land measuring 6 kanals 6 sarsai.

The plaintiff claimed the aforementioned injunction on the premise that the land was purchased vide sale deed dated 07.10.2008 for consideration of ₹1,84,800/- from Roor Singh son of Sadhu Singh and Sukhwant Singh son of Roor Singh. The vendor was in exclusive possession of the suit property since 1967 as the land subject matter of the sale deed was allotted to the vendor under Government scheme and after purchase of land, one room for personal utilization and wall was constructed. Owing to the threat perception, the suit aforementioned was filed.

Defendant Nos.1 to 3 opposed the suit and denied the plaintiff to be in exclusive and established possession over the suit property. It was alleged that possession of the suit property was with defendants since the marriage of defendant No.1 with late Jaswant Singh, who was son of defendant No.5. The contents of sale deed

were also denied.

The plaintiff in respect of the aforementioned averments, examined five witnesses and brought on record Ex.P1 sale deed, Ex.P1/A copy of abstract of register of deed writer, Ex.P2 site plan, sale certificate Mark A, copy of agreement Mark C and receipt dated 17.1.2013 Ex.P4.

On the contrary, defendants examined four witnesses and brought on record site plan Ex.D7, certified copy of statement of Sukhwant Singh Ex.D1 & D2, certified copy of statement of Roor Singh Ex.D3 & D4, certified copy of judgment Ex.D5 and certified copy of decree sheet Ex.D6.

The trial Court dismissed the suit and the appeal laid before the lower Appellate Court was also dismissed.

Mr. Sandhir, learned counsel appearing on behalf of the appellant submitted that both the courts below have committed illegality and perversity in dismissing the suit as the actual physical possession of the suit property was with the plaintiff. Description of the property and the house as per Ex.D5 was not correct. In the site plan, Ex.P2, description of the house was clearly mentioned. The property mentioned in the judgment and decree Ex.D5 was entirely different from the subject matter and therefore, could not have been connected with the suit property. The land was purchased on possession transfer basis with writing from Roor Singh son of Sadhu Singh.

I am afraid aforementioned argument of Mr. Sandhir is not sustainable, for, PW2 Sukhwant Singh in cross-examination

admitted that dispute with regard to property was previously decided by the Court on 17.04.2012 in favour of defendant No.1 Dalbir Kaur widow of Jaswant Singh. The certified copy of the judgment passed in Civil Suit No.168/20.10.2008 Ex.D5 and decree revealed that it was defendant (plaintiff therein) who was in possession of the suit property. In such circumstances, injunction as sought by the plaintiff, in my view, tantamounts to circumvent the decree Ex.D5. The judgment and decree Ex.D5 and D6 had attained finality. PW5 Sukhwinder Singh admitted that though he was present at the time of execution of the sale deed but did not sign the said sale deed as attesting witness. Even the scribe also feigned ignorance. The plaintiff miserably failed to prove ownership, therefore, possession could have not been followed.

As an upshot of my finding, I do not intend to subscribe to the argument of Mr. Sandhir to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 16, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No