

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

RSA No.6721 of 2016(O&M)
Date of decision: 14.05.2018

Lekh Raj

... Appellant

Versus

Mastan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sachin Mittal, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was decreed by the trial Court, vide judgment and decree dated 21.11.2014, and the counter-claim preferred by the appellant-defendant had since been dismissed. For, even the appeal preferred against the said decree failed and was dismissed by the appellate Court on 07.05.2016, the appellant-defendant is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff filed a suit for injunction restraining the defendant from causing interference in his possession over the suit land or forcibly dispossessing the plaintiff therefrom. In brief, the case set out by the plaintiff was that he had purchased a land measuring 360 sq. feet i.e. 12' X 30' (plot No.25), comprised in rect. No.197, killa Nos.4 & 6, vide agreement to sell dated 05.04.2004, executed by Rajinder Pal and Satinder Pal sons of Sampuran Singh, for a sum of Rs.30,000/-. The said agreement was reduced in writing and the plaintiff was put in possession of the suit property. But as

the defendant arrived at the suit property on 11.07.2012, and tried to forcibly dispossess the plaintiff, thus, the suit.

In the written statement filed on behalf of the defendant, it was pleaded that the defendant had purchased the suit land from Sampuran Singh son of Raja Singh, vide sale deed bearing No.297/1, dated 16.05.1988. However, while scribing the said sale deed, the suit property was shown to be comprised in khasra No.195/7, whereas it was actually situated in khasra No.197/5. Further, as per the revenue record, Sampuran Singh was the owner of the land bearing khewat No.2318/2122 min, khatoni No.3577, khasra No.197/5 (8-0) and khasra No.195/7 was owned by Kesar Kaur daughter of Anokha Singh. Still further, no agreement to sell dated 05.04.2004 was entered by the plaintiff with Rajinder Pal and Satinder Pal qua the suit land. By way of counter claim, the defendant stated that the plaintiff along with his complaint made to the local police station against the defendant had enclosed a copy of another agreement to sell dated 13.02.2012 regarding the suit land which rather showed that the agreement dated 05.04.2004 was wholly false and fabricated. Thus, the counter-claimant happened to be the owner in possession of the suit land.

On a consideration of the matter in issue, and the evidence on record, both the Courts concurrently concluded that the plea set out by the defendant that the agreement to sell dated 05.04.2004 was a forged and fabricated document, remained unsubstantiated for lack of any cogent evidence. Rather, the jamabandi for the year 2002-03 (Ex.P6) showed Satinder Singh and Rajinder Pal to be the owners in possession of the suit land, and not the defendant. Further, defendant claimed himself to be the owner in possession of the suit land on the basis of the sale deed dated

16.05.1988 (Ex.D4), but an analysis thereof showed that defendant had actually purchased an area comprised in a different khasra number i.e. 195/7 and not the suit land. Though, the defendant had set up a plea that inadvertently in the sale deed (Ex.D4) khasra No.195/7 was recorded instead of 197/5, but that too, at best, would show that defendant had purchased a land comprised in khasra No.197, killa No.5, whereas the suit land was situated in khasra No.197, killa Nos.4 & 6. Thus, the defendant could not claim to be the owner in possession of the suit land on the basis of the sale deed Ex.D4. Still further, it was never his case that suit property was actually comprised in killa No.5 rect. No.197 and not in rect. No.197, killa Nos.4 & 6 as claimed by the plaintiff. And, that being so, for the defendant to succeed, he ought to have got the suit property demarcated to prove that it was indeed situated in rect. No.197, killa No.5. But no such evidence was led. Although, the defendant (DW1) stated in his cross-examination that he had got the disputed property demarcated even before execution of the sale deed dated 16.05.1988, which was conducted by a Kanungo, but neither did he remember the name of the official nor produced the alleged demarcation report. Thus, the adverse inference was required to be drawn against him. Further, in view of the above, the suit land as also the property allegedly owned by the defendant vide sale deed dated 16.05.1988 were distinct and separate. As regards the agreement to sell dated 13.02.2012 (Ex.D1), it was observed that plaintiff (PW1) duly clarified in his deposition that the property mentioned in the agreement to sell dated 13.02.2012 (Ex.D1) was different and distinct from the property referred in Ex.P1, for vide agreement Ex.D1 the plaintiff purchased an area measuring 40 sq. yards, which was adjacent to rect. No.197, killa Nos.4 & 6, from Chander Kumar son of

Kunthi Ram for a valuable consideration of Rs.6,00,000/-. Further, in the matter at hands, the defendant had not controverted the title of the plaintiff qua the plot bearing No.197, killa No.4 & 6 and had instead claimed ownership qua rect. No.197, killa No.5. Further, the matter could be viewed from yet another perspective. In the jamabandi for the year 2002-03 (Ex.P6), Rajinder Pal and Satinder Pal were shown to be the co-sharers in khasra No.197, killa No.4, measuring 4 kanals 17 marlas being residential plot and rect. No.197, killa No.6, measuring 5 kanals 5 marlas as *gairmumkin ahata* in which Rajinder Pal and Satinder Pal were shown to be co-sharers along with other persons. Thus, it was concluded that at the time of execution of the agreement to sell (Ex.P1), vendors of rect. No.197 killa No.4 & 6 were bonafides co-owners of the land out of which disputed plot measuring 360 sq. feet was sold to the plaintiff. In a nutshell, neither could the defendant prove his concern with regard to the suit property that was in possession of the plaintiff nor could he prove his ownership and possession upon the plot bearing rect. No.197, killa No.5.

On being pointedly asked, learned counsel for the appellant could not point out anything from the record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality. No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

14.05.2018
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO