

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

RSA No.5887 of 2015 (O&M)

Date of Decision: January 12, 2018

Surinder Pal

...Appellant

Versus

Kamaljit Kaur

...Respondent

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Vishal Munjal, Advocate for
the appellant.

HARINDER SINGH SIDHU, J.

Ld. Counsel for the appellant states that the costs as directed vide order dated 6.7.2017 have been deposited.

This regular second appeal has been filed against the judgment and decree of the courts below, whereby, the suit of the plaintiff-appellant had been dismissed.

The plaintiff had filed a suit for permanent injunction for restraining the respondent-defendant from interfering in the peaceful possession of the plaintiff over property comprised in Khewat No.775, Khatauni No.1015 and 1017, Part of Khasra No.27R/5, 27R/6/1 to the extent of 5 Marlas, situated at Sunder Nagar, Pathankot, within the revenue estate of village Saili HB No.332, Tehsil Pathankot, District Gurdaspur.

The case of the plaintiff was that he had purchased the suit land vide sale-deed dated 18.5.2007 from one Parkash Devi for a sale consideration of Rs.2,25,000/-. He claimed that he was residing in the house

in dispute. Part of it was constructed and part of it was open and foundations had been raised upto the ground level. The defendant, who was the owner of Khasra Number 13R/29/2 was threatening to dispossess the plaintiff from the suit property. The defendant on the other hand claimed that the plaintiff was not owner of the suit land. In fact, he had sold three marlas out of the suit land in favour of Indras vide sale-deed dated 2.5.2001 and the said Indras had constructed his house thereupon. The plaintiff was left with only one Marla land.

The learned courts below on the basis of the evidence, concluded that the plaintiff had purchased land measuring 5 Marlas from one Rajan bearing Khasra No.26R/25/1 with specific boundaries which were reflected in the sale-deed Ex.D6. Daniel Masih, the Special Power of Attorney holder of the plaintiff admitted that the plaintiff had got executed sale-deeds of the property in dispute twice, as in the first sale-deed Ex.D6, Khasra Number was wrongly mentioned as 26R/25/1. A fresh sale-deed Ex.P1 was got executed from Parkasho Devi of actual Khasra Number 27R/5 and 27R/6/1. He also admitted that four marlas out of the five marlas had been sold to Indras vide sale-deed dated 21.5.2001, who after purchasing the same had built his house over it. As even as per the admission of the plaintiff he was left with only one marla of land, but while filing the suit, he claimed to be in possession of the entire five marlas it was concluded that he had not come to the court with clean hands and consequently was not entitled to equitable and discretionary relief of permanent injunction. Further, it was held that the identity of the property had not been proved as per the dimensions reflected in the site plan Ex.P2. As the site plan of the plaintiff

was proved to be incorrect, no executable decree regarding relief of permanent injunction could be granted.

No fault can be found with the aforesaid finding of fact recorded by the learned courts below.

However, one thing is clear that there is no dispute between the parties that the plaintiff- appellant was owner of five marlas of land comprised in 27R/5 and 27R/6/1 out of which he has sold some part to Indras and is still owner of the remaining land. The respondent is owner of land comprised in Khasra No.13R/25/1. The plaintiff, however, was not been able to establish the identity of the property under his ownership. He did not get any demarcation of land remaining under his ownership conducted. In view of this, it is held that the dismissal of the present RSA would not debar the plaintiff from instituting a fresh suit for similar relief with proper identification of land still under his ownership.

January 12, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No