

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

RSA No.1312 of 2017 (O&M)

Date of Decision: 11.09.2018

Jatinder Kumar

.....Appellant

Versus

Jarnail Singh & others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Ravish Bansal, Advocate for the appellant.

TEJINDER SINGH DHINDSA J.

CM No.3131-C of 2017

In view of the averments made in the application, prayer is allowed. The delay of 18 days in refilling the accompanying appeal is allowed.

Application disposed of.

Main case

Plaintiff Jatinder Kumar is in second appeal before this Court having remained unsuccessful in both the Courts below.

Briefly noticed plaintiff/appellant herein filed a suit for possession of a house measuring 5 marlas on the basis that the same had been sold to him by Smt. Asha Rani wife of Sh.Mohan Lal, vide sale-deed dated 19.06.2000. It is averred in the plaint that in the sale-deed, Smt. Asha Rani, has given wrong boundaries/surroundings with regard to the plot. Asha Rani was in fact owner of 5 marlas in Killa No.5 but in the sale-deed dated 19.06.2000, killa No.3 had been mentioned. It was stated that defendants no.1 to 3, have no concern with the property comprised in killa no.5, which is actually under the ownership of the plaintiff and they being in illegal possession of the same, are liable to deliver possession thereof to

the plaintiff.

Upon notice being issued, defendants No.1 to 4 did not appear despite service and as such were proceeded ex parte. Defendants No.5 and 6 appeared but did not file written statement. Trial Court as such struck off their defence.

Trial Court dismissed the suit of the plaintiff on 10.10.2014 and even a civil appeal preferred by the plaintiff has been dismissed vide judgment dated 12.07.2016, passed by the learned District Judge Sri Muktsar Sahib.

Counsel for the appellant has argued that the Courts below have erred in completely ignoring and rejecting the evidence adduced by the plaintiff-appellant and to which there was no rebuttal. It is contended that mere mentioning of wrong boundaries in a sale-deed would not adversely effect the title of the appellant over the suit property. Counsel submits that the Trial Court has given undue weightage to the fact of non-examination of Asha Rani who was the vendor and from whom the appellant had purchased the property. That apart it is contended that the suit for possession of immovable property based on title could not have been dismissed on the ground of limitation.

Counsel for the appellant has been heard at length and case paper-book has been perused.

As per registered sale-deed dated 19.06.2000, Exhibit P-1, in favour of the appellant herein the boundaries of the house in question were described as follows:-

East: Chanan Singh,
West: Hargopal
North: Panchayat Ruri
South: Street

It is the case of the appellant that Smt. Asha Rani, Vendor and who had sold the 5 marla house vide sale-deed dated 19.06.2000 Exhibit P-1, the correct boundaries ought to read as follows:-

East: Shop of Satgurdial,

West: House of Mohar Singh,

North: Street,

South: House of Lachhmi Singh”

No evidence was adduced by the plaintiff-appellant in support of the contention aforementioned. Appellant had only produced on record an Akshajra Exhibit P-5 but which did not support the case of the appellant.

As per recital in the sale-deed dated 09.06.2000 Exhibit P-1, possession already stood delivered in favour of the appellant. The plaintiff-appellant had not been able to reconcile the factual situation as to which property he had been put in possession at the time of execution of the sale-deed dated 09.06.2000 Exhibit P-1 as opposed to the property he was claiming possession by way of filing of the suit.

The suit property had been purchased by the appellant from Smt. Asha Rani. The dispute is with regard to wrong boundaries having been furnished in the registered sale-deed dated 09.06.2000 Exhibit P-1. Entire case set-up by the appellant was the wrong killa number has been mentioned in the sale-deed. Under such circumstances Smt. Asha Rani, Vendor, would have been the best witness so as to support the prayer and claim of the appellant. Concededly, Vendor Smt. Asha Rani was not even examined by the appellant before the Trial Court.

The argument raised by counsel as regards the suit having been dismissed on the ground of limitation is wholly mis-conceived.

The Trial Court has merely observed that when possession had

been delivered to the plaintiff-appellant on 09.06.2000 i.e.when the sale-deed had been executed in his favour, no explanation had come-forth from his side as to why he had remained quiet for a period of almost 12 years i.e. upto the date of institution of the suit in the year 2012. Relief has been denied to the plaintiff-appellant after examining the lis on merits.

The concurrent view taken by the Courts below is based on due appreciation of evidence and by adopting valid and cogent reasoning.

No interference is called for.

Appeal dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

11.09.2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No