

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

RSA No.4316 of 2014 (O&M)

Date of decision : 23.02.2018

Ghanshyam

...Appellant

Versus

Vijay Kumar Aggarwal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Sharma, Advocate for the appellant.

Mr. Harish Bansal, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

CM No.10007-C of 2014

For the reasons stated in the application, which is duly supported by an affidavit, delay of 115 days in filing the appeal is condoned.

Application is allowed.

Main Case

Defendant No.2-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court.

The plaintiff had filed a suit for permanent injunction claiming that the defendants or their agents be restrained from interfering in his peaceful possession over plot No.67 measuring 155.8 square yards. The plaintiff claimed that he had purchased the plots No.63, 64 and 67 situated

in Village Choran from defendant No.1 through his attorney Jarnail Singh vide registered sale deed dated 11.02.2004. There is a single sale deed with respect to plot Nos.63, 64 and 67. It is further the case of the plaintiff that he has already sold his plots measuring 63 and 64 to someone else and, therefore, he is now left with plot No.67 measuring 155.8 square yards.

The defendants contested the suit. Defendant No.1 admitted that plot Nos.63, 64 and 67 were sold to the plaintiff through attorney. Defendant No.2 contested the suit and pleaded that he is owner of plot measuring 150 square yards comprised in khasra no.645 from Sukhwant Singh son of Gurnam Singh i.e. defendant No.1.

Since, the suit was only for injunction, the trial Court framed following issues:-

- “1. Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP*
- 2. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 3. Whether the suit of the plaintiff is false and frivolous and as such is liable to be dismissed? OPD*
- 4. Relief.”*

Learned trial Court chose to dismiss the suit, whereas the learned First Appellate Court after re-appreciating the evidence available on the file, have reversed the finding of the learned trial Court and decreed the suit filed by the plaintiff for permanent injunction.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

Learned counsel for the appellant has raised the following arguments:-

1. The property has not been identified as the plaintiff has only given plot number and the measurement of the plot. However, the plaint was not accompanied by layout plan duly certified by the Patwari of the area as provided under the High Court Rules and Orders.
2. The plaintiff pleads that after the sale deed, he had taken over the possession of the property after getting the demarcation, however, the demarcation report has not been produced.
3. Layout plan of the colony Ex.DX has not been proved on file and hence, it was inadmissible in evidence.
4. The land can only be identified through description of the khasra numbers and in both the sale deeds, there is a reference to the khasra numbers. Hence, the judgment passed by the First Appellate Court is erroneous.
5. The finding of the trial Court has not been dealt with by the First Appellate Court and the plaintiff has to stand on his own legs.

In the considered opinion of this Court, the property in dispute is duly identified by the plot number assigned by the developer. It is undisputed that the property in dispute is part of a colony. Lay out plan of the colony has come on record as Ex.DX. The plot has been assigned the number i.e. 67. This plot is having definite measurement. The plaintiff while filing the suit has also identified the property by giving description of the property situated on all the four directions. Hence, the argument of the learned counsel for the appellant does not have any substance.

Second argument of the learned counsel is that the report of demarcation has not been produced. The present suit is only for the suit for injunction. The suit is with respect to the plot No.67. The plot is part of a planned colony. Hence, even if the plaintiff has not produced the demarcation, which he pleads, would not make any difference. The Courts below have not decided the question of title. The First Appellate Court after appreciating the evidence available on the file has recorded a finding that it is the plaintiff who is in possession of the property. Hence, the arguments of the learned counsel that the lay out plan has not been proved or the land has to be identified only by the khasra numbers. In a suit for injunction, the Court was only required to see as to who is in the possession of the property.

Last argument of the learned counsel is that the plaintiff has to stand on his own legs. No doubt, this is the fundamental requirement in a suit but in the present case, the plaintiff has proved his case. The plaintiff has produced the copy of the sale deed through which the plaintiff had purchased the three plots i.e. bearing Nos.63, 64 and 67 in a developed colony. No doubt, the properties are also identified by the khasra numbers but once in a developed colony, plot number has been assigned with the description of the property on all the four sides, it cannot be said that the plaintiff has failed to prove his case.

The defendant-appellant is alleged to have purchase the property vide sale deed dated 28.10.2002, but a look at the sale deed would show that the property is part of land identified by khasra numbers undisputedly a developed colony has come up. It is the case of the defendant that he purchased the property before the colony was developed. Once the

colony has been planned and the property has been divided into the plots, it would be open to the defendant to take appropriate steps to establish his ownership.

In view thereof, there is no scope for interference with the findings of fact arrived at by the First Appellate Court.

Regular Second Appeal is dismissed.

23.02.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No