

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

**RSA-1503-2017 (O&M)  
Date of Decision:03.08.2018**

Ashok Kumar

... Appellant

Versus

Vijay Kumar & others

... Respondents

**CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.**

Present:- Mr. R.S. Budhwar, Advocate for the appellant.

...

**TEJINDER SINGH DHINDSA, J. (ORAL).**

Plaintiff/respondents herein instituted a suit for permanent injunction for restraining the defendants from interfering into the peaceful possession over the plot in question situated within the *abadi deh* of Village Sankhol, Tehsil Bahadurgarh, District Jhajjar. Relief of mandatory injunction was also sought directing the defendants to hand over vacant possession of the property in question in the eventuality they manage to take possession of the suit property during pendency of the suit. Vide judgment dated 31.10.2014 passed by the trial Court, suit filed by the plaintiffs was decreed and defendants were restrained from interfering in the peaceful possession of the plaintiffs over the suit property. Since no allegations came forth during pendency of the suit with regard to dispossession of the plaintiffs, no orders were passed with regard to relief of mandatory injunction sought. Appeal filed by the defendants-Ashok Kumar stands dismissed vide judgment dated 09.08.2016 passed by learned Additional District Judge, Jhajjar.

2. Resultantly, the defendant/appellant is in second appeal before this Court.

3. Briefly, it may be noticed that the suit had been instituted by the plaintiffs on the pleadings that they were Harijans and non proprietors of Village Sankhol. Their deceased father, namely, Fateh Singh had been allotted a plot measuring 3 marlas comprised in khewat No.534/471, khatoni No.570 situated within the *abadi deh* of Village Sankhol vide Gift Deed bearing No.2910, dated 25.12.1976 and on the basis thereof even a mutation No.1951 was duly sanctioned. After the death of Fateh Singh, plaintiffs being the sons became the absolute and sole owners of the plot as also an old constructed house. Upon notice having been issued, defendants contested the suit by filing a written statement. Stand taken on behalf of the defendants was that father of the plaintiffs, namely, Fateh Singh during his lifetime had sold the disputed plot to Sh. Kartar Singh s/o Prabhu and who in turn had sold the same in favour of the defendants. It was stated on behalf of the defendants that they had constructed a house over the plot and as such, were owners in possession over the suit property.

4. Suit filed by the plaintiffs for relief of permanent injunction stands decreed as has been noticed herein above and the judgment and decree of the trial Court stands affirmed by the lower Appellate Court.

5. Learned counsel representing the appellant has argued that it is a case of mis-reading and mis-appreciation of evidence. The Courts below have discarded the documents i.e. agreement to sell dated 23.11.2005 Ex.D1 as also a receipt of even date Ex.D2 and which would clearly establish ownership of the appellant over the suit property. Further submitted that the plaintiff/respondents have all through been residents of Delhi and have never

occupied the plot in question and as such, the relief of permanent injunction against the defendant/appellant ought not to be granted.

6. Having heard counsel for the appellant at length, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

7. Evidence had been adduced on behalf of the plaintiffs/respondents reflecting their title over the suit property in the nature of letter/Gift Deed bearing No.2910, dated 25.12.1976 Ex.P1/A. Further evidence in this regard was mutation No.1951 Ex.P1/B and jamabandi for the year 2000-01 Ex.P1/C. Even an official of the State Government, namely, Joginder Singh, PW2 had been summoned and who had proved on record the Gift Deed bearing No.2910, dated 25.12.1976 Ex.P1/A issued in favour of Fateh Singh i.e. father of the plaintiffs by the Gram Panchayat, Village Sankhol as per the scheme formulated by the Government. To the contrary, the appellant to substantiate his stand with regard to ownership and possession over the suit plot had merely tendered a photocopy of an alleged agreement to sell dated 23.11.2005 Ex.D1 and receipt of the sale deed Ex.D2 stated to have been executed between the owner of the plot Sukhbir Singh and defendant-Ashok Kumar. The Courts below have rightly concluded that mere exhibiting the document does not dispense with its proof. Merely placing on record photocopies of documents without seeking permission to adduce the same as secondary evidence could not absolve the appellant as regards the onus to prove the same in accordance with law. That apart, an agreement to sell dated 23.11.2005 Ex.D1 relied upon by the appellant would not be a document of title. No evidence whatsoever had been adduced on record to show ownership/title of the vendor, namely, Sh. Sukhbir Singh

and from whom the suit plot was alleged to have been purchased by the appellant. Furthermore, no other evidence towards possession of the suit plot in favour of the appellant in the nature of electricity bills, ration card etc. had come forth.

8. The judgments passed by the Courts below granting relief of permanent injunction in favour of the plaintiff/respondents does not suffer from any patent infirmity or perversity.

9. There is no merit in the appeal and the same is dismissed.

10. Since the main appeal itself has been decided, pending applications, if any, shall also stand disposed of.

**03.08.2018***harjeet***(TEJINDER SINGH DHINDSA)  
JUDGE**

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|-----|----------------------------|--------|
| i)  | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable?        | Yes/No |