

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 1711 of 2018(O&M)

Date of Decision:22.5.2018

Sucha Singh (now deceased) through his Lrs.

---Appellant

vs.

Kabal Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. C.M.Munjal, Advocate
for the appellant

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit filed by Sucha Singh appellant (since deceased) represented by his legal representatives alongwith Mangal Singh for permanent injunction restraining the respondents/defendants from interfering in peaceful possession of the plaintiffs over one house and open pit for storing dirty water as shown in green ink in the site plan annexed with the plaint, situated within gair mumkin abadi bearing khata Khatoni No. 502/1350 Rect. & Killa No. 310/2 and 310/4 situated in village Valtoha (Theh Sarhali) Tehsil Patti, District Tarn Taran was dismissed by the Civil Judge (Junior Division), Patti on 7.4.2014 and the judgment and decree passed by the trial court came to be affirmed in appeal filed by unsuccessful plaintiff Sucha Singh.

The case set up by the plaintiffs is that plaintiff No. 1 was owner in possession as co-sharer over disputed land and he had given the said property to plaintiff No. 2 in oral exchange who had constructed a house over the same. A *nali* was constructed by the gram panchayat for storage of dirty water from the house of plaintiff No. 2. The defendants have no right, title or concern with the suit land but they are threatening to interfere in peaceful possession of the plaintiffs over the suit land with the help of police or some unknown notorious persons.

Defendants filed the written statement and raised preliminary objections inter alia that plaintiffs have no locus standi and cause of action to file the suit; plaintiffs are not co-sharers in the property in dispute and no injunction can be granted against the true owner. The factum of oral exchange by plaintiff No. 1 in favour of plaintiff No. 2 has been denied. Plaintiff No. 2 also filed a suit regarding the same property in the Court at Patti and the same was dismissed as withdrawn. They are bona fide purchasers in good faith for consideration and protected under Section 41 of the Transfer of Property Act because they had purchased suit land from different co-sharers vide different sale deeds. It is further averred that plaintiffs have suppressed material facts from the Court and approached the court with uncleaned hands.

The trial court framed issues reproduced in para 3 of judgment of the said court. The parties were permitted to adduce evidence in support of their respective claims. Having heard counsel for the parties in the light of materials on record, the trial court rejected plea of the appellants to be entitled for permanent injunction as prayed for primarily in view of

observations recorded in paras 8 and 9 of the judgment.

As has been noticed hereinbefore, findings recorded by the trial court came to be affirmed in appeal by the Additional District Judge in view of observations made in para 13 of the judgment.

Counsel for the appellant would contend that as a matter of fact, there was no dispute between the parties with regard to the house in question and house in dispute was unnecessarily made subject matter of suit for injunction. It is further argued that real dispute between the parties was with regard to the *nali* constructed by the gram panchayat which was used for storage of dirty water from house of plaintiff No. 2. It is argued with vehemence that judgments passed by the Courts suffer from non-application of mind and non-appreciation of materials on record in right perspective. A serious prejudice shall be caused to the appellants in case the judgments passed by the courts are not set aside.

I have heard counsel for the appellants, perused the paper book particularly the judgments impugned and statement of Gurwinder Singh son of Sucha Singh made available by counsel for the appellant during course of hearing.

The Court in Appeal in para 13 of the judgment has adverted in detail to testimony of Gurwinder Singh PW1 on the basis whereof, the Court refused to accept plea of the appellant that judgment and decree passed by the trial court suffer from an error much less illegality warranting intervention. I have gone through the statement of Gurwinder Singh PW1 as well as the observations recorded in para 13 of the judgment of Court in Appeal but find that findings recorded by the Court in Appeal affirming

that of the trial court do not suffer from an error much less perversity warranting intervention. Counsel for the appellant has failed to make out a case that a question of law is involved that requires adjudication after notice to the contesting party.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

22.5.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No