

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

**RSA No.514 of 2017 (O&M)
Date of decision:03.12.2018**

Ram Kumar (since deceased) through LRs ... Appellant

Vs.

Ram Niwas (since (deceased) through LRs and others
... Respondents

CR No.8713 of 2016 (O&M)

Ishwar Singh and another ... Petitioners

Vs.

Ram Niwas (since deceased) through LRs and others
... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.S.Randhawa, Advocate
 for the appellants/petitioners (in both cases)

 Mr. Dinesh Arora, Advocate
 for the respondents.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two cases; one RSA bearing No.514 of 2017 at the instance of the plaintiff, who was not successful in claiming the injunction in respect of plots no.174 and 239/1 and another CR No.8713 of 2016 by the petitioner-plaintiffs against the orders dated 17.12.2013 and 26.08.2016, of the Courts below, whereby, the alleged

interim order dated 20.02.1997 (Annexure P-1) was flouted by the defendants.

The plaintiff in the aforementioned suit asserted to have become owner of the plots bearing Nos.179 and 239/1 since 1952-53 when the partition of the village was effected. It was alleged that one Kago widow of Jai Narain had gifted her entire share in favour of the plaintiff, vide gift deed dated 22.1.1960 and mutation in this regard was sanctioned on 14.05.1960.

The plaintiff also purchased the share of one Chameli Devi to the extent of 64 kanals 6 marlas and mutation in this regard was effected and raised the construction by raising a boundary wall, two rooms on the ground floor, one room on the first floor and had inducted Manohar Lal cousin of the plaintiff, in the aforementioned premises.

It was alleged that defendant no.4 filed the suit qua injunction against the plaintiff regarding forcible interference and threat, though the injunction was granted on the basis of having purchased plot no.239/1 dated 29.03.1996.

It is pertinent to mention here that when the suit had already reached the final stage, the plaintiff had moved an application seeking amendment of the plaint by changing the number of plot from 239 to 239/1 which was declined by the trial Court. However, this Court in CR No.5983 of 2006, vide order dated 24.07.2018, allowed the amendment with a rider that no fresh evidence shall be led.

The defendants opposed the suit by asserting that suit was hit by res judicata as the similar suit seeking injunction in their favour is pending adjudication and claimed to have become owner of plot no.239/1 as per the sale deed dated 29.03.1996 which fact was in the knowledge of the plaintiff. The area of 239/1 was 12364 square feet.

With regard to plot no.174, the defendants submitted that they have no concern with the same. The possession of the plaintiff was emphatically denied.

On preponderance of the evidence, the trial Court dismissed the suit and the application for additional evidence to place on record a copy of the order whereby suit filed by the defendants granting injunction against the plaintiff, dismissed as withdrawn was sought to be placed on record but the same has also been rejected.

Mr. R.S.Randhawa, learned counsel appearing on behalf of the appellant submitted that the gift deed had not been denied by the defendants. The Court below could have confined the injunction with regard to plot no.174, though the Local Commissioner appointed during the course of hearing proved and held that some area from point W a khor and Q a kurdi was owned by the plaintiff. The Courts below abdicated in non-suiting the plaintiff on account of non-examination of Manohar Lal, occupant inducted, in the premises after raising the construction. The injunction should have been granted qua plot no.174. There was no occasion for the plaintiff to challenge the sale deed of 27.03.1996 in respect of plot

no.239/1.

I have heard the learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Randhawa. For claiming the injunction, the plaintiff has to stand on his own legs by discharging the onus. The plaintiff miserably failed to discharge the onus to establish the possession in respect of both the plots, aforementioned. Manohar Lal has also not been examined. Even the bills with regard to construction of the boundary wall and gate have also not seen the light of day.

With regard to plot no.239/1, the plaintiff has failed to lead any evidence and cut his own feet at the time when the amendment was allowed by this Court. The injunction suit granting injunction in favour of the plaintiff (defendant herein) and against the defendants (plaintiffs therein) and its withdrawal placed on record by way of additional evidence pales into insignificance as there was no finding on merit. The litigant can always seek injunction in case the threat of dispossession dehor of ownership. No other document has been referred to before this Court. One line of the Local Commissioner which was based on hearsay to establish the possession cannot be a ground for setting aside the impugned judgments.

I do not find any illegality and perversity in the judgments and decrees of the Courts below much less no substantial question of law arises for determination.

Resultantly, RSA No.514 of 2017 is dismissed on the ground of delay as well as on merits.

In view of the dismissal of the suit, findings and decision thereon would be a farcical exercise.

Consequently, the revision petition no.8713 of 2016 is also dismissed.

December 03, 2018

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No