

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

RSA No.5842 of 2017 (O&M)

Date of decision:23.04.2018

Shinda

Vs.

... Appellant

Sarwan Singh

... Respondent

RSA No.6314 of 2017 (O&M)

Shinda

Vs.

... Appellant

Sarwan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Deepak Verma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing Nos.5842 and 6314 of 2017. RSA No.5842 of 2017 is arising out of decision of civil suit No.303 of 2006 titled as Sarwan Singh Vs. Shinda, claiming declaration and permanent injunction (hereinafter called as “first suit”). Another RSA No.6314 of 2017 is arising out of decision of civil suit No.406 of 2007 titled as Shinda vs. Sarwan Singh and another claiming permanent injunction (hereinafter called as “second suit”).

Since the common question of facts and law are involved, the facts are being taken from RSA No.5842 of 2017 arising out of first suit.

Plaintiff-Sarwan Singh filed a suit claiming declaration to the effect that he was the owner in possession of the suit land measuring 11 marlas on the premise that he purchased the aforementioned land in an open auction vide sale deeds dated 07.12.1987 by depositing the amount ₹200 and ₹400/- respectively but the defendant under the garb of wrong entry in the revenue record, wanted to take the actual and physical possession which gave cause of action to file the suit, aforementioned .

The suit was contested by the appellant-defendant in first suit and respondent-defendant in second suit on the premise that sale deed obtained by the plaintiff was unauthorized, illegal and have no effect on the rights of the defendant as he was in settled possession, much less tenant under the Govt. on payment of eight times of land revenue. It was alleged that defendant was never ejected from the suit land. Even the factum of auction was also denied.

Since the parties were at variance, the trial Court framed the following issue in first suit:-

- “1. Whether plaintiff is entitled for declaration and for permanent injunction as prayed for? OPP*
- 2. Whether this Court has no jurisdiction to try and decide the permanent suit? OPD*
- 3. Whether plaintiff has no locus standi to file the present suit? OPD*
- 4. Whether the plaintiff has not approached this Court with*

clean hands and has suppressed the material facts from this Court? OPD

5. *Whether proper court fee has not been affixed on the plaint? OPD*

6. *Whether suit is barred by law of limitation? OPD*

7. *Whether suit is bad for non-joinder of necessary parties, i.e., State of Punjab? OPD*

8. *Whether plaintiff is estopped from filing the present suit by his acts and conducts? OPD*

9. *Relief.”*

The trial Court framed the following issues in second suit:-

“1. *Whether the plaintiff is in possession of the suit land? OPP*

2. *Whether plaintiff is entitled to the permanent injunction as prayed for? OPP*

3. *Whether the suit is not maintainable in the present form? OPD*

4. *Whether the plaintiff has no cause of action to file the present suit. OPD*

5. *Relief.”*

The plaintiff examined Davinder Singh as PW1, plaintiff Sarwan Singh himself as PW2, Tarlochan Singh as PW3 and Kanti Nath as PW4 and closed the evidence.

On the other hand, defendant himself examined as DW1,

Gurminder Singh Clerk as DW2, Paramjit Singh Junior Assistant DC Office Hoshiarpur as DW3, Vikar Kumar Clerk as DW4, SPI Ashok Kumar as DW5 and closed the evidence.

In the evidence, the appellant-defendant had taken the plea that he had purchased the land on payment of eight times of land revenue and projected to have owned the land on the aforementioned document. The Court below found the aforementioned assertion beyond the pleadings and rejected the same. As regards the payments of rent, the Court formed the opinion that the said amount was deposited by Madan Lal and Sansar Chand and decreed the suit of the respondent-plaintiff by granting the declaration and injunction against the appellant from interfering into peaceful possession but the aforementioned decree was confined to only 9 marlas of land. It is the defendant who assailed the findings of the trial Court. The Lower Appellate Court upheld the finding of the trial Court while dismissing the appeal. It is in this background, two regular second appeals have been filed.

Mr. Deepak Verma, learned counsel appearing on behalf of the appellant in support of memorandum of appeals submitted that there is no finding in the judgment and decree of the trial Court particularly in a suit seeking injunction against Sarwan Singh qua 2 marlas of land of which he was not found to be in possession, therefore, there is gross illegality and perversity. On the contrary, the appellant had been able to prove on record the rent receipt Ex.DW3/2 to Ex.DW3/4 to show that rent had been paid in the treasury of the Government but the same had been declined despite the

fact that name of the appellant had been written at the back of the receipt.

During the course of hearing, he did not press the argument regarding ownership as it was beyond pleadings. In the absence of ownership of respondent qua 2 marlas of land, the trial Court should have granted the injunction as long and settled possession had not been denied, rather proved on record. No steps of ejectment either by the plaintiff or by the Central Government had been taken, therefore, under the garb of injunction, the respondent-plaintiff was unnecessarily taking plea to dispossess the appellant without resorting to the provisions of law. Even after dismissal of the appeal, a fresh mutation qua 9 marlas of land had been entered in favour of the respondent-plaintiff and urged this Court for setting aside the findings under challenge.

I have heard the learned counsel for the appellant, appraised the judgments and decrees as well as record shown during the course of arguments and of the view that there is no force and merit in the submissions of Mr. Verma, for, rent receipts referred above, i.e., Ex.DW3/2 to Ex.DW3/4 particularly, rent receipt dated 29.04.2009, (Ex.DW5/B) earlier was marked as Mark B, the amount had been deposited by Sansar Chand and not by appellant. However, on the back side, name of eight persons were mentioned: Sansar Chand shown to have deposited ₹94/-, Udho ₹38/- Joginder Singh ₹19/-, another Joginder Singh ₹138/-, Ranjit Singh ₹66/-, Pritam Singh ₹141/-, Sarini ₹260/- and Shinda ₹35/-, total of which comes to ₹591/-. Rest of amount, i.e., ₹1754/- gone un-explained as

total amount of ₹2345/- has been deposited. The back side of rent receipt is also not endorsed through the testimony of any attesting witness as it did not bear the stamp of Tehsildar or any authorized signatory.

Similar is the position with regard to Ex.DW5/A, whereby, only a sum of ₹341/- stated to have been deposited that too at the instance of one Madan Lal but at the back side, names of Jeet, Madan Lal and Chinda have been mentioned. None of the witnesses have stated that back side of the documents is also borne out from the record and rightly so, in my view, the Courts discarded the aforementioned evidence for the purpose of holding appellant to be a gair marusi.

A person cannot seek injunction on the basis of the un-proved documents. A person who seeks equity must come to the Court with clean hands. The aforementioned documents do not leave iota of truthfulness or status of appellant as gair marusi. On the contrary, the respondent-plaintiff not only been able to prove the sale deed but rapat roznamcha bearing Nos.116 and 117 against which khasra no.4/1 was purchased. Though Mr. Verma submitted that it does not disclose the khasra number, for, rapat roznamcha has not been assailed in any other proceedings. Since the appellant has not been able to prove the possession of gair marusi, rightly so the Court declined the injunction vis-a-vis 2 marlas of land, thus, submission is denied.

In view of the aforementioned observations, I do not find any illegality and perversity in the findings rendered by both the Courts below

which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeals stand dismissed.

(AMIT RAWAL)
JUDGE

April 23, 2018
savita

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