

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

**RSA-549-2018 (O&M)
Date of Decision: 11.09.2018**

Pirthi Singh

...Appellant

Versus

Bhagwan Dass since deceased through his LR's and ors

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. J.S. Khattar, Advocate for
Mr. Pankaj Bali, Advocate for the appellant.

HARINDER SINGH SIDHU, J.

The plaintiff has filed this regular second appeal impugning the judgments of the courts below whereby his suit has been dismissed.

The plaintiff had filed a suit for permanent injunction for restraining the defendants from interfering in his peaceful possession and for dispossessing him from land measuring 05 kanal 0 marla comprised in khewat number 1167, Khatoni number 1328, Rectangle number 462, killa number 13 min (5-0) situated in the Revenue estate of the village Chandrao, Tehsil Indri, District Karnal.

The case of the plaintiff was that he was the owner of the said land.

Previously he had filed a Civil Suit No.392 of 1991 against Deva Ram son of Mai Dass for possession of this land as well as land comprised in rectangle number 462,

Killa No.14 (6-0), 15 (8-0), 16(8-0). That suit was decreed vide judgment and decree dated 24.09.1991 of the Sub- Judge, Ist Class, Karnal. He filed an Execution Petition. Possession of the land was delivered to him vide Rapat Roznamcha dated 23.01.2003. Vide order dated 29.03.2003 the execution filed by him was dismissed being fully satisfied. The Khasra Girdawri entry regarding the suit land and the other land subject matter of Civil Suit No.392 of 1991 was corrected in the name of the plaintiff. The defendants filed Civil Suit No.48 of 1998 against the plaintiff as well as Deva Ram and Prem Chand challenging the judgment and decree dated 24-09-1991 passed in Civil Suit No.392 of 1991. This suit was dismissed as withdrawn vide order dated 04.11.1999 of the then Civil Judge, Senior Division, Karnal. Another Civil Suit No.546 of 1990 was filed by Madan Lal son of Deva Ram against Deva Ram which was decreed vide judgment and decree dated 15.11.1990. Defendant No.1 who was not a party in the said suit filed objections contending that only land measuring 03 kanals- 0 marla of rectangle No.462 was subject matter of the said suit but possession of excess land measuring 05 kanals 0 marla had been delivered to Madan Lal. The objections filed by defendant No.1 were dismissed vide order dated 14.11.1997 of the then Civil Judge, Junior Division, Karnal. Defendant No.1 filed an appeal against that order which was allowed by the Additional District Judge, Karnal vide order dated 03.12.1998. Madan Lal filed Civil Revision No.258 of 1999 which was dismissed vide order dated 01.07.2002. Defendant No.1 applied for issuance of warrants of possession qua the land in question. Plaintiff filed objections dated 22-07-2003 which were dismissed vide order dated 12.05.2004 by the then Civil Judge, Junior Division, Karnal. Against that the plaintiff filed Civil Revision No.2568 of 2005

which was allowed. The order of the Executing Court was set aside and the case remanded to the Executing Court to reconsider the objections filed by the plaintiff as per procedure prescribed in Order 21 Rule 101 CPC and other relevant provisions. After remand the Executing Court vide order dated 31.08.2010 directed issue of warrants of possession of land measuring 05 kanals 0 marla through Tehsildar/Bailiff with direction to hand over the possession to Bhagwan Dass from Madan Lal. It was averred that Madan Lal is not in possession of the aforesaid land rather it is the plaintiff who is continuing in actual physical and cultivating possession of the suit land since 23.01.2003 when its possession was delivered to him in execution proceedings in Civil Suit No.392 of 1991. Now the defendants on the basis of warrants of possession issued by the Executing Court on 31.08.2010 were seeking to dispossess the plaintiff illegally and forcibly from the land . Hence the suit.

The case of the defendants was that the decree dated 15.11.1990 in Civil Suit No.546 of 1990 was wrongly passed pursuant where to Madan Lal had secured warrants of possession pertaining to the land subject matter of that Civil Suit and got executed the said warrant. He had taken possession of 03 kanals land in excess which was not even the subject matter of the suit. As soon as the defendants got to know this fact they filed objections under Order 21 Rule 97 CPC pertaining to 03 kanals land which was taken in excess by Madan Lal. They also challenged the decree passed in Civil Suit No.546 of 1990. The aforesaid suit was decreed by the then learned Civil Judge, Junior Division, Karnal. Appeal preferred by Madan Lal was dismissed. Defendants filed Civil Revision. In the Civil

matter is involved in CWP-258-1999, decided on 01.07.2002 and no separate suit could be filed pertaining to the said land. The said Civil Revision was dismissed as infructuous. It was alleged that the plaintiff is hand in glove with his father Deva Ram and brother Madan Lal and filed the present suit which is liable to be dismissed. It was further pleaded that the plaintiff had filed Civil Suit No.392 of 1991 against Deva Ram and his brother seeking a decree of possession with respect to the land in question which was decreed on 24.09.1991. The said decree was challenged by the defendants in a separate suit which was later withdrawn. When the plaintiff filed an Execution Petition to execute the said decree and got issued the warrant of the possession, the Revenue Authorities submitted a report that Deva son of Remal Dass the defendant in the suit was not a co-sharer in the suit land. He was not in possession of even a single inch of land. The land was under the ownership of the defendants. Prem Chand, Arjun and Ram Kishan were tenants on the land. When the plaintiff could not take possession of the land in the said Execution Petition, he cleverly got the Execution Petition dismissed as withdrawn on 04.10.1997 based on a statement made by Deva Ram in Court on 04.10.1997 that possession of the land had been delivered to the plaintiff. Plaintiff concealed this fact and further filed Execution Petition where in connivance with the Revenue Authorities he secured a report dated 23.01.2003 on the warrant of possession that possession of the land had been delivered to him. The plaintiff had filed objections in the Execution Petition titled as 'Madan vs. Deva' which were dismissed by the then Civil Judge, Junior Division, Karnal. It was pleaded that the aforesaid land was not the subject matter of Civil Suit No.392 of 1991. The

Defendants had taken possession of the land in due course of law and the plaintiff

had no concern therewith.

The learned trial Court noted that the plaintiff while appearing as PW-2 had admitted in his cross-examination that he had earlier filed two suits regarding the same property along with his father in which warrants of possession had been issued regarding land measuring 08 kanal 0 marla. He also admitted that he had filed objections which were dismissed and warrants of possession were issued against him and Madan Lal and possession of land measuring 08 kanal 0 marla was handed over to the defendants and thereafter *roznamcha Wakyati* No.124 was entered. He also admitted that he had not filed any appeal against the order dismissing his objections. He also admitted that possession of rectangle No.462, Killa No.13 (5K-0M) was handed over to Bhagwan Dass and *roznamcha Wakyati* No.124 was entered. The learned trial Court noticed that from the order dated 11.12.2010 of the learned Civil Judge (Ex D9) it is clear that objections filed by the plaintiff have already been dismissed and warrants of possession were issued in favour of Bhagwan Dass. Vide warrant of possession (Ex.D7) the possession of the suit land was handed over to defendant Bhagwan Dass on 10.12.2010. Thereafter, the name of the defendant Bhagwan Dass was entered in the jamabandi Ex.D11 and the subsequent khasra girdawaris Ex-D12 and Ex.D13. It was concluded that from the documentary as well as oral evidence it was clear that the defendant is owner in possession of the suit land and the plaintiff has no concern with the same. Accordingly, the suit was dismissed.

The learned lower Appellate Court affirmed the finding of the trial Court.

Findings of fact have been recorded by the Courts below. Learned

