

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

RSA No. 5873 of 2018 (O&M)

Date of decision:06.12.2018

Mam Chand (deceased) through LRs.

..... Appellant.

Versus

Todar Mal (deceased) through LRs.

..... Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Rohit Jindal, Advocate
for Mr. Sunil Nehra, Advocate
for the appellant.

LISA GILL,J.

Appellant-defendant no.1 is aggrieved of judgment and decree dated 05.02.2015, passed by the learned Civil Judge (Jr. Division), Sonapat, as well as judgment and decree dated 10.08.2018, passed by the learned Additional District Judge, Sonapat.

Brief facts necessary for the adjudication of the case are that Todar Mal (deceased)-respondent no.1, now represented by his legal representatives filed a suit for permanent injunction and mandatory injunction against the present appellant and the legal representatives of Sri Ram, Gram Panchayat village Abbaspur, District Sonapat and Tehsildar, Sonapat for restraining the present appellant and respondent no.2-Sri Ram from interfering in the peaceful possession of the plaintiff and from dispossessing him from the plot in question which was allotted

to him by the Gram Panchayat village Abbaspur. Further mandatory injunction was prayed for correction in the revenue entries claimed to be wrong and incorrect. It was pleaded that plot no. 28/17/5 measuring 3 Marlas (100 Sq. Yards) was allotted to the plaintiff by the Gram Panchayat of village Abbaspur out of Panchayat Deh land vide gift deed no. 11556 dated 23.02.1977. Plaintiff was in actual physical possession of the plot since its allotment. It came to his knowledge in October 2007 that appellant and defendant no.2 in collusion with the revenue authorities got mutation of this plot entered in their names and were claiming their right over the said plot. Despite request, the said defendants, it was averred wanted to illegally and forcibly wrest possession from the plaintiff. Hence the suit.

Defendant no.1-appellant, contested the suit. Various preliminary objections were raised in the written statement. Averments on merits were denied. It was claimed that the Gram Panchayat had in-fact gifted 3 Marlas plot in Khewat No. 309/293 Khatoni No. 375, Khasra/rectangle and killa no 28/17/5(0-3) situated within the revenue estate of village Abbaspur to defendant no.1 vide registered gift deed no. 11553 dated 23.02.1977. On the basis thereof mutation no. 1774 was sanctioned. Appellant claimed to be owner in possession of the plot and had constructed a Kotha being used for domestic and practical purposes. Dismissal of the suit was prayed.

Defendant no.3-Gram Panchayat, while filing a separate written statement supporting the plaintiff's case. Defendants no.2 and 4 chose not to appear and were proceeded against *ex parte*.

No replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to a decree for permanent injunction, as prayed for?OPP
2. Whether the plaintiff is entitled for a decree of mandatory injunction against defendant no.4 for directing him to correct the wrong and illegal revenue entries in the name of plaintiff?OPP
3. Whether the suit of the plaintiff is not maintainable in the present form?OPD
4. Whether the plaintiff has no cause of action to file the present suit?OPD
5. Whether the plaintiff has no locus standi to file the present suit?OPD
6. Whether the defendant is entitled for special costs under Section 35-A CPC?OPD
7. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court on considering the facts and circumstances of the case decreed the suit filed by the plaintiff while holding that the plot in question had indeed been allotted to the plaintiff by the Gram Panchayat village Abbaspur vide registered gift deed no. 11556 dated 23.02.1977.

Appeal against the said judgement and decree filed by the present appellant-defendant no.1 was dismissed by the learned Additional District Judge, Sonapat, vide judgement and decree dated 10.08.2018.

Aggrieved therefrom, present appeal has been filed by the appellant-defendant no.1.

Learned counsel for the appellant argues that evidence on record proves that the plot in question was in-fact allotted to the appellant after due execution of the gift deed. Mutation was duly sanctioned in

favour of the appellant, which is proved by PW-4-Rajender Singh, Patwari. It is submitted that the plaintiff has claimed the plot to be lying vacant whereas two rooms have been raised for tethering the cattle. Application filed by the appellant for leading additional evidence by appointment of a local commissioner was wrongly dismissed. Defendants stand has been corroborated by two independent witnesses. It is thus prayed that this appeal be allowed and both the judgements and decrees passed by the learned Courts below be set aside. Suit filed by the plaintiff be dismissed throughout.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

Plaintiff in order to prove his case has relied upon certified copies of the gift deeds Ex.P-2 and Ex.P-3. Ex.P-2 reveals allotment of plot no. 28/17/5 to the plaintiff-Todar Mal by the Gram Panchayat village Abbaspur, vide registered gift deed no. 11556 dated 23.02.1977. PW-4-Ajit Kaur, ARC, Tehsil Complex Sonapat, has proved the said gift deed registered in favour of the plaintiff. Ex.P-3 is the gift deed no.11553 also dated 23.02.1977 in respect to plot no. 28/17/7, wherein allotment of the plot is in favour of the appellant-Mam Chand. It is specifically observed by both the learned Courts below that there is clear overwriting on the number 7 in the phrase 'plot no.28/17/7'. The digit 7 has been converted to digit 5. Similar is the situation in the entry of mutation on which defendant-appellant seeks to rely on. Original gift deed no. 11553 dated 23.02.1977 placed on record as EX.D-1 by the appellant-defendant bears the overwriting, whereas certified copies of the gift deed Ex.P-2 and

Ex.P-3 reveals allotment of plot no. 28/17/5 in favour of the plaintiff and plot no.28/17/7 in favour of the present appellant. It is relevant to note that the original gift deed No. 11533 was admittedly in possession of the defendant-appellant.

At this stage, it is relevant to note that the Gram Panchayat village Abbaspur in its written statement has admitted the execution of the gift deed no.11556 dated 23.02.1977 in respect to plot no.28/17/5 in favour of the plaintiff. Plaintiff is admitted to be in possession of the suit property since its allotment. Furthermore, DW-2-Sunil, has admitted possession of the appellant-defendant no.1 over plot no.28/17/5. Application for leading additional evidence moved before the learned Additional District Judge, Sonapat, has been rightly dismissed by the learned Additional District Judge, Sonapat. Plaintiff has successfully proved his case on the basis of the evidence on record, whereas appellant-defendant no.1 has miserably failed to bring on record any evidence for declining the relief as claimed by the plaintiff.

Learned counsel for the appellant-defendant no.1 is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 05.02.2015 and 10.08.2018 passed by the learned Civil Judge (Jr. Division) Sonapat and

learned Additional District Judge, Sonapat, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

06.12.2018

s.khan

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No

(LISA GILL)
JUDGE