

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

RSA No. 691 of 2017 (O&M)

Date of decision : August 02, 2018

Matadin

Versus

.....Appellant

Vijay Chand and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. J.P. Sharma, Advocate
for the appellant.

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgment and decree dated 21.11.2013 passed by the learned Civil Judge (Senior Division), Narnaul whereby the suit filed by the appellant was dismissed. He is also aggrieved of judgment and decree dated 13.09.2016 passed by the learned Additional District Judge, Narnaul, vide which his appeal has also been dismissed.

Suit for permanent injunction and mandatory injunction filed by the appellant – plaintiff to the extent that the appellant is the owner in possession of the suit property and defendant – respondent be restrained from interfering in his possession and not to obstruct irrigation of his land from the well in question was dismissed by the learned Civil Judge (Senior Division), Narnaul on 21.11.2013. Appeal preferred by the plaintiff was also dismissed learned Additional District Judge, Narnaul vide judgment and decree dated 13.09.2016.

Brief facts of the case are that the appellant filed the suit for permanent injunction and mandatory injunction while pleading that houses

reflected in the site plan attached were constructed by the appellant over the property in question. He had been residing therein and was the owner in possession of the said houses with the defendants having no concern thereof. It was further pleaded that father of the defendants-respondents Bishan Dass was aware of the possession of the plaintiff. The appellant had been irrigating his field from the tubewell situated within the suit property. Bishan Dass had died. Proceedings between the appellant and the defendants in respect to correction of khasra girdawries pertaining Khasra Nos. 5787, 5790, 5795, 5796, 5797, 5789/2 measuring 7 bigha 9 biswa were decided on 17.06.2008 by the learned Assistant Collector First Grade, Narnaul on the basis of a compromise. Another matter 'Matadin versus Umesh Kumar' in respect to khasra Nos. 5786, 5791, 5792 measuring 2 bigha 12 biswa situated in town Narnaul was also compromised on 17.06.2008. The appellant averred that the defendants - respondents committed fraud and added khasra Nos. 5793 and 5794 whereas no compromise had taken place in respect to these khasra numbers. Dispute has been raised in respect to khasra Nos. 5793 and 5794. Entries were made in the revenue record at the instance of the respondents on the basis of a forged compromise and were, therefore, not binding on his rights. Earlier the suit property was reflected in the name of Attar Singh through Matadin. Revenue entries were got corrected. Respondents intended to encroach upon the suit property without any right, therefore, the instant suit was filed by the appellant.

The respondents contested the suit while raising various preliminary objections. The appellant's case on merits was denied. It was pleaded that the site plan attached was not according to the spot. The

respondents and their predecessors-in-interest were owners in possession of the suit property. Suit property was declared evacuee property and allotted to the persons, who came from Pakistan. Land irrigated by the well situated in the land was allotted to Brij Lal, grandfather of the respondents. As per the government policy, wells were not allotted but it was declared that the allottees shall irrigate their land from the well. Respondents and their forefathers were irrigating their land from the well and the electricity connection was in the name of respondent No. 2 - Rohit Kumar. Respondents had constructed five *Chappers* and tin shed for storing agricultural equipment and for storing grain and fodder. They were also residing there. Application for correction of khasra girdawari of the land measuring 7 bigas 9 biswas was compromised by the appellant while agreeing that the respondents have a right to get the appellant's name deleted from the relevant revenue record.

Pursuant to the compromise, respondents executed a sale deed in favour of Smt. Saroj Devi wife of Lal Chand to the extent of 1/3rd share and Smt. Rewati Devi wife of Matadin to the extent of 2/3rd share from khasra no. 5795 measuring 1 bigha 1 biswa. It was specifically mentioned in the sale deed that the suit land was alienated without any right of irrigation. It was further clarified in the compromise that the well constructed in the land bearing khasra Nos. 5793 and 5794 in possession of the respondent had a pumping set and electricity connection in the name of the respondent - Rohit Kumar and the appellant had no concern for connection with the said khasra numbers. It was, thus, pleaded that the suit be dismissed.

A counter claim was filed by the respondents claiming to be the owner in possession of the suit property. Replication to the written

statement was filed.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for a decree for permanent injunction against the defendants restraining them for demolishing the house of plaintiff as alleged, being situated in khasra No. 5793-5794 ? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the defendants have installed their pumping set and electricity connection in the suit property and have their house therein. Therefore, they are entitled for permanent injunction against the plaintiff? OPD
4. Relief.

Evidence was led by both the parties.

Learned trial Court returned the finding on issue No. 1 against the appellant – plaintiff and on issue No. 3 in favour of the defendants. Suit filed by the appellant was, accordingly, dismissed by the learned trial Court vide judgment and decree dated 21.11.2013.

Appeal preferred by the appellant was dismissed by the learned Additional District Judge, Narnaul vide judgment and decree dated 13.09.2016. Aggrieved therefrom, the present appeal has been filed by the appellant.

Learned counsel for the appellant vehemently argues that both the learned courts below have grossly erred in not taking into consideration the fact that compromise dated 17.06.2008 (Ex.D1) was itself a result of fraud and misrepresentation. The present suit was filed immediately thereafter on 18.08.2008. The appellant could not have been non-suited on the ground that he has filed a simple suit for permanent injunction and not for declaration. It is, thus, prayed that this appeal be allowed and impugned

judgment and decrees be set aside, consequently decreeing the suit filed by the appellant.

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

Argument of learned counsel for the appellant that the compromise (Ex.D1) is a result of fraud and misrepresentation is not borne out from the record. This is so for various reasons. Application filed by the appellant for correction of girdawari was dismissed by the learned Assistant Collector First Grade, Narnaul on 17.06.2008 on the basis of the compromise. Present suit was filed on 18.08.2008 but the compromise was not challenged therein. It is not denied that the compromise (Ex.D1) was subsequently challenged in the case titled Mata Din versus Vijay Chand (Civil Suit No. 16 RT/12 in the year 2012, during the pendency of the present suit. Moreover, absence of signatures of the appellant on page 2 and 3 of the compromise are inconsequential. The appellant's signatures are very much present on page 1 and 4 of the compromise. Moreover, pursuant to the terms of the compromise, which are mentioned on page 2 of the same, sale deeds have been executed by the respondent – Rohit Kumar. It is specifically mentioned by the learned trial Court that the compromise (Ex.D1) does not reflect insertion of any numbers but a complete para in this regard has been mentioned. Similarly, no benefit can accrue to the appellant from judgment dated 06.09.2013 (Ex. PX) titled Bishan Dass versus State of Haryana. No strict proof of residence of the appellant at Narnaul was proved. In pursuance to the compromise (Ex.D1), respondent – Rohit Kumar has sold the agricultural land as mentioned at page 2 of the compromise in favour of one Saroj Devi wife of Lal Chand to the extent of

1/3rd share and Rewati Devi wife of present appellant Matadin to the extent of 2/3rd share vide sale deed Ex.D2. It is mentioned in the sale deed (Ex.D2) that the purchaser would not have any right over the well and pumping set which is adjacent to the property sold. Concurrent findings of fact have been returned by both the learned courts below on a proper course of appreciation of evidence on record which warrant no interference by this Court

In my considered opinion, no question of law much less a substantial question of law is involved in this appeal for the consideration of this Court.

No other point has been raised or argument addressed by learned counsel for the appellant.

Learned counsel for the appellant is unable to point out any illegality and infirmity in 21.11.2013 passed by the learned Civil Judge (Senior Division), Narnaul as well as judgment and decree dated 13.09.2016 passed by the learned Additional District Judge, Narnaul, which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

August 02, 2018
rts

(Lisa Gill)
Judge

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