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

RSA-623-1988 (O&M)

Date of decision : 18.03.2019

Sucha Singh (deceased) through LR's and others

... Appellants

Versus

Manjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Dhillon, Advocate and
Mr. Anil Kumar, Advocate
for the appellants.

Mr. K.S. Chahal, Advocate and
Mr. Onkar Singh, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The appellants-defendants are in regular second appeal against the judgment and decree of the lower Appellate Court, whereby the appeal of the respondents-plaintiffs preferred against the judgment and decree of the trial Court, dismissing the suit for injunction, has been accepted, in essence, the suit has been decreed.

The plaintiffs alleged that they were owner in equal share of the plot, in dispute, described in the headnote of the plaint, for the last 15 (fifteen) years, though owned by Custodian, by storing their manure etc. An application for purchase of the plot was submitted to the Tehsildar (Sales) accompanied by a report supporting their possession, but the defendants, in

the meantime, extended the threats, therefore, constrained to file the suit.

The defendants opposed the suit and alleged that the property was not in ownership of custodian, but allotted to one Brahmanand, Daya Nand and Ved Parkash, who remained in possession of the same as owners and vide sale deed dated 17.11.1981, purchased the land from the aforementioned persons for a consideration of ₹6,600/- and since then, had been in possession.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether owner of the plot is Custodian? OPP*
- 2. whether the plaintiffs are in possession of the plot for the last 15 years? OPP*
- 3. Whether the plaintiff is entitled to the injunction prayed for? OPP*
- 4. Whether the plot in dispute was of Ved Parkash and others and the defendants have purchased the same from them? OPD*
- 5. Whether the plaintiffs is estopped to file the suit? OPD*
- 6. Relief.*

The plaintiffs in support of the aforementioned pleadings examined Manjit Singh as PW1, Ram Lal, Revenue Patwari as PW2 and Tarsem Singh as PW3 and brought on record many documents Ex.P1 to Ex.P4. On the other hands, the defendants examined four witnesses and tendered in evidence documents Ex.D1 and Ex.D2 i.e. sale deed and allotment order.

The trial Court by noticing the sale deed found that the plaintiffs had not been in possession of the property and while discarding the reports of the Patwari (Ex.P2 to Ex.P4), dismissed the suit, for the

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reason, that there was some contradiction. As noticed above, the lower Appellate Court, in appeal, reversed the findings of the trial Court.

Mr. G.S. Dhillon and Mr. Anil Kumar, learned counsel appearing on behalf of the appellants submitted that the lower Appellate Court has committed error in holding that the plaintiffs as owners in possession of the plot, in dispute. Such finding is totally contrary to the facts on the file being without any reasoning. The appellants-defendants are *bona fide* purchasers of the plot, in question, from the vendor, who was an allottee as per allotment (Ex.D2). The plaintiffs miserably failed to establish the identity and connect the plot Nos.28 and 29, thus, urges this Court for setting aside the impugned judgment and decree, by allowing the present second appeal.

Mr. K.S. Chahal, learned counsel appearing on behalf of the respondents-plaintiffs submitted that Manjit Singh-PW1 supported the averments in the plaint and the tenor and mode of the cross-examination reflected that the plot did not bear number 28 and 29 as alleged. Kuldip Singh, Surjit Singh and Manjit Singh, submitted an application before the Tehsildar, who reported the possession over the plot. The Tehsildar was suspended, much later than the report and in such circumstances, the defendants could not interfere in the peaceful possession as they had claimed the possession of plot Nos.28 and 29, but the defendants failed to place on record any documentary to establish their possession, thus, urges this Court for dismissal of the present regular second as there is no illegality and perversity in the judgment and decree, under challenge.

I have heard learned counsel for the parties, appraised the paper

book and of the view that the following 'Substantial Questions of Law' arise for determination:-

- 1. Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity or not?*
- 2. Whether the defendants-appellants have been able to prove their possession over the plots, subject matter of the suit, on the basis of the sale deed, based upon the allotment Ex.D2.*

The plain and simple case of the appellant-defendant is that they had purchased the property from the vendor, who was allotted vide allotment (Ex.D2). Ex.D2 did not carry any stamp or serial number and its exhibition does not dispense its proof. The allotment has to be proved through the testimony of the witness, to whom, the Department had issued. The whole case of the plaintiffs was with regard to the plot reflected in the site plan as well as report Ex.P2 to Ex.P4, proved through the testimony of Patwari PW2. Manjit Singh in cross-examination, was specifically asked the question with regard to the plot bearing No.28, but he emphatically denied. The defendants had unnecessarily been creating a fraud by opposing the injunction granted in favour of the plaintiffs, in the absence of connection of plot Nos.28 and 29, or any other documents with the property in dispute.

In view of what has been noticed above, I do not find any illegality and perversity in the judgment and decree of the lower Appellate Court. The Substantial Questions of Law, as framed above, are answered in favour of the respondents-plaintiffs and against the appellants-defendants. No ground is made out for interference. Accordingly, the present regular second appeal is dismissed.

The interim order dated 24.05.1988, granting status quo regarding possession is ordered to be vacated.

18.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No