

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

RSA-4678-2013(O&M)

Date of decision:-22.7.2019

Attar Singh

...Appellant

Versus

Zile Singh

...Respondent

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.Lokesh Sinhal, Advocate  
for the appellant.

Mr.M.S. Kathuria, Advocate  
for the respondent.

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**H.S. MADAAN, J.**

Briefly stated, facts of the case are that plaintiff Zile Singh had brought a suit against defendant Attar Singh seeking a declaration that he is owner in possession of the house measuring 329 square yards situated within 'abadi deh' of village Pipli besides

craving for grant of permanent injunction restraining the defendant from interfering into his peaceful possession of the said house.

As per the version of the plaintiff, the ownership and possession of the house in question devolved upon him from his ancestors inasmuch as his grandfather Sh.Goverdhan was owner in possession of the house and after his death, it was inherited by Sh.Harke Ram, father of the plaintiff and when Sh.Harke Ram left this mortal world, the plaintiff along with his brothers Raghbir Singh, Partap Singh, Rajender Singh and Narain Singh stepped into his shoes, though the house in question fell to share of the plaintiff and his brother Partap Singh in view of settlement between the brothers inter se; that Partap Singh had died issueless, whereas Raghbir had died leaving behind his daughter Azad Kaur; that the plaintiff himself is unmarried and issueless and has been residing in the house in question along with his niece Azad Kaur; that the house comprises of two rooms, one baithak, two worship places, a kitchen, stair case etc.; that the defendant has no right or concern with the house in question but even then he threatened to interfere in peaceful possession of the plaintiff over the house in suit, not listening to his requests to desist from doing so. Feeling aggrieved, the plaintiff filed the suit in question.

On getting notice, the defendant appeared and filed written statement contesting the suit, wherein he raised various

preliminary objections to wit that the suit was not maintainable; that the plaintiff had suppressed the real and material facts; that the suit was bad for non-joinder of necessary parties since owner of plot No.132 had not been impleaded as a party. On merits, the defendant controverted the material assertions in the plaint contending that earlier also a similar suit in respect of the house in question was filed by Ms.Azad Kaur against the present defendant and others but it was dismissed by the Court vide judgment dated 27.4.2009 and in the said suit Ms.Azad Kaur had claimed title on the basis of release deed, purported to have been executed in her favour by plaintiff Zile Singh; that the open area is plot No.133, which was allotted to father of defendant in the partition of abadi deh of the village; that the house of the plaintiff is constructed partly in plot No.132 and partly in the area of a street; that the trees, dung heaps and khors are there in the open area, which belong to the answering defendant. Refuting the remaining allegations, the defendant prayed for dismissal of the suit.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is owner in possession of the house as mentioned in para No.1 of the plaint? OPP.
2. Whether the plaintiff is entitled to the decree of declaration and permanent injunction as prayed for? OPP.
3. Whether the suit of the plaintiff is not maintainable in the

present form? OPD.

4. Whether suit of the plaintiff is bad for non-joinder of necessary parties? OPD.
5. Whether the plaintiff has not come to the court with clean hands and has suppressed the material facts from the Court? OPD.
6. Relief.

Both the parties led evidence in respect of their claims.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiff and against the defendant, issues No.3 to 5 in favour of the plaintiff. Resultantly, the trial Court vide judgment and decree dated 24.9.2012 decreed the suit of the plaintiff restraining the defendant from interfering into the peaceful possession of the plaintiff over the suit property.

Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal before District Judge, Sonapat, which was assigned to Additional District Judge, Sonapat, who vide judgment and decree dated 11.10.2013 dismissed the appeal and upheld the impugned judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the defendant has filed the present regular second appeal before this Court, notice of which was issued and the respondent-plaintiff appeared through counsel.

I have heard learned counsel for the parties besides going through the records and I do not find any merit in the appeal.

Both the Courts below considering the facts and circumstances of the case, the pleadings of the parties and evidence brought on record by them have come to the conclusion that plaintiff is in possession of the house in suit and defendant has no right to interfere in such peaceful possession except in due course of law. I do not see any defect or infirmity in such findings recorded by the Courts below, which might have called for interference by this Court.

Though learned counsel for the appellant has contended that an earlier suit filed by niece of the plaintiff, namely, Ms.Azad Kaur had been dismissed but this aspect has been dealt with at length by the Courts below observing that the said judgment is not binding upon the plaintiff and the suit filed by Ms.Azad Kaur had been dismissed because plaintiff Zile Singh had denied having executed any release deed in her favour or she being in possession of the house in question and it no where been held by the trial Court that the present defendant was owner in possession of the suit property. This reasoning is good enough and the judgment in the suit filed by Ms.Azad Kaur can certainly not come in the way of the plaintiff filing the present suit.

The other argument put forward by learned counsel for the appellant was that though the house of the plaintiff is constructed

over plot No.132 but open area attached therewith falls in plot No.133, which was allotted to father of the plaintiff and since it is a dispute regarding demarcation, a Local Commissioner should be appointed to carry out the demarcation so as to find out the factual position. In support of his contention, he has referred to judgment ***Haryana Waqf Board Versus Shanti Sarup and others (2008) 8 Supreme Court Cases 671*** by the Apex Court.

Whereas this plea was vehemently opposed by counsel for the plaintiff/respondent.

After hearing learned counsel for the parties, going through the record and perusing the judgment referred to by learned counsel for the appellant, I find that there is no reason to appoint a Local Commissioner at this stage to carry out demarcation. The trial Court has dealt with this aspect in detail in para No.9 and para No.10 of the judgment minutely analysing the evidence brought on file by the parties referred to the site plan filed by the defendant himself observing that in terms of the said site plan, house of one Surender is situated on the north east side of house in suit and there is no common wall between the house of the plaintiff and house of Surender and as per site plan wall of house of Surender is common with plot of the defendant and as conceded by the defendant and his other witness in their cross examinations on the north of house in suit, there is house of Surender, which can be possible only if the

entire property in dispute is in possession of plaintiff, as such the site plan filed by defendant was found to be wrong. An inference was drawn that the entire property is in possession of the plaintiff and the defendant by taking advantage of dismissal of the suit filed by niece of the plaintiff i.e. Ms.Azad Kaur and the fact that there is no record of ownership of houses constructed in the abadi deh of the village is trying to encroach upon a major area of the property of the plaintiff. In para No.12, it has been observed that the defendant had failed to prove that the property in dispute bears same number as was allotted to him/his predecessor-in-interest and copy of preliminary decree/final decree passed in alleged partition suit had not been placed on record. After discussion on the evidence, it has been concluded that there was no material on record to link property in dispute with property No.132 and 133. As such in absence of documentary evidence, the possession had to be decided on the basis of oral evidence, which in this case was found to be that of plaintiff.

Therefore, there is no reason to appoint any Local Commissioner to carry out demarcation.

The concurrent findings on the issues so recorded do not suffer from any irregularity or illegality. The findings are affirmed. No fault is found with the judgments and decrees passed by the Courts below. Those are upheld.

No substantial question of law arises in this appeal.

The appeal is found to be without any merit and is dismissed accordingly.

22.7.2019

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**(H.S.MADAAN)**  
**JUDGE**

**Whether reasoned/speaking: Yes/No**

**Whether reportable : Yes/No**