

RSA No. 4642 of 2019 (O&M)

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

RSA No. 4642 of 2019 (O&M)

Date of Decision: October 17, 2019

Kuldeep Singh and another

..... Appellant(s)

Versus

Surjit Singh

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Baltej Singh Sidhu, Advocate
for the appellants.

LISA GILL, J.

This appeal has been filed by the appellants who were arrayed as defendants before the learned trial Court being aggrieved of the judgment and decree dated 02.08.2019, passed by the learned Additional District Judge, Ferozepur as well as judgment and decree dated 17.04.2017, passed by the learned Additional Civil Judge (Sr. Division), Ferozepur whereby suit filed by the respondent-plaintiff has been decreed.

Brief facts necessary for the adjudication of the case are that the respondent-plaintiff filed a suit for decree of possession of the land measuring 31 Kanals as described in the plaint along with recovery of mesne profits to be determined by the Court, after proper inquiry, for the crops of Sauni, 2009 till delivery of the actual possession of the suit land besides interest thereon @ 18% per annum for the wrong, illegal use and occupation of the suit land, by the defendants. The plaintiff claimed to be an employee of the Canal and Irrigation Department, working as a Junior Engineer. The defendants were claimed to be the owners in possession of the suit land. An agreement to sell

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the property in question was stated to have been executed in favour of the plaintiff on 17.11.1999 @ Rs.1,40,000/- per acre. A sum of Rs.4,25,000/- was received from the plaintiff as earnest money. Possession of the property in question was stated to be delivered to the plaintiff at the time of execution of agreement to sell. The defendants further agreed to execute a registered sale deed of the suit property on 10.05.2000 on receipt of balance sale consideration and other expenses. Defendant – Kashmir Singh (owner) did not execute the said sale deed and ultimately a suit for specific performance of the agreement to sell dated 17.11.1999 was filed by the plaintiff. The said suit was decreed in the plaintiff's favour vide judgment and decree dated 04.03.2004. The appeal filed by the defendants was dismissed by the District Judge, Ferozepur vide judgment and decree dated 26.05.2007. Regular second appeal filed by the defendants was also dismissed by this Court on 15.01.2008. The plaintiff, thereafter filed an execution application for execution of the sale deed, which was executed on 29.01.2008 through the agency of the Executing Court. Sale deed was registered on 06.02.2008. It is pleaded that in May 2008 the defendants while taking an undue advantage of the absence of the plaintiff from the village took forcible possession of the suit property and since then have been sowing and harvesting the crops thereon. The execution application filed by the plaintiff in the earlier proceedings was disposed of as being fully satisfied by the then learned Additional Civil Judge (Sr. Division), Ferozepur on 23.10.2010 with liberty to the plaintiff to file a separate suit for possession after following due process. The plaintiff approached the defendants with a request to delivery the actual possession of the suit land and also to pay mesne profits, but they refused to do so and therefore, the present suit was filed.

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The defendants-appellants filed separate written statements resisting the suit. Various preliminary objections were raised. It is pleaded that the plaintiff did not approach the Court with clean hands. He never remained in possession of the suit property at any point of time and the sale deed in the plaintiff's favour already took challenge in the Civil Court in the suit titled "Baljinder Singh Vs. Kashmir Singh and others". Dismissal of the suit was prayed for.

Replication was filed by the plaintiff. Following issues were framed by the learned trial Court on the basis of the pleadings:-

1. Whether the plaintiff is entitled to possession of the suit land, as prayed for? OPP.
2. Whether the plaintiff is entitled to mesne profits and interest, if so, at what rate? OPP
3. Whether the suit is not maintainable? OPD
4. Whether the suit of plaintiff is time barred? OPD
5. Relief.

Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case decreed the suit filed by the plaintiff and directed the defendants-appellants to hand over the vacant possession of the suit property within three months, failing which liberty was afforded to the plaintiff to get possession of the suit property in execution proceedings. The decree for recovery of mesne profits was also passed in the plaintiff's favour.

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It is noticed by the learned trial Court that defendant - Kashmir Singh had lost in all the civil litigations against the plaintiff up to this High Court itself. The plaintiff had categorically asserted his possession of the suit property since the execution of the agreement to sell. The earlier litigation between the parties is duly admitted by the appellants. It is further noted that one Baljinder Singh grand son of Kashmir Singh had filed a civil suit against defendant Kashmir Singh and others qua the suit property, claiming it to be the joint Hindu family property. The said suit was dismissed by the court of Ms. Gurpreet Kaur, PCS, CJC, Ferozepur on 20.11.2013. Appeal preferred by Baljinder Singh was also dismissed vide judgment and decree dated 14.01.2016 (Ex.P1).

Appeal preferred by the present appellants-defendants was dismissed by the the learned Additional District Judge, Ferozepur vide the impugned judgment and decree dated 02.08.2019. Aggrieved therefrom, present appeal has been filed by the appellants-defendants.

I have heard learned counsel for the appellants and have gone through the photocopy of part of the record furnished by him in Court today.

Learned counsel for the appellants does not deny that in the earlier litigation between the parties i.e. the suit for specific performance filed by the plaintiff – Surjit Singh against the appellants, was decided in favour of the plaintiff by the learned trial Court on 04.03.2004. As mentioned in the foregoing paras, the said proceedings has attained finality with the dismissal of the appeal filed by Kashmir Singh-appellant by this Court as well on 15.01.2008. Learned counsel for the appellants has vehemently argued that

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the possession of the suit property in fact, was never ever delivered to the plaintiff at the time of execution of the agreement to sell dated 17.11.1999. It is vociferously urged that the plaintiff for the reason best known to him not sought the relief of possession at the time of filing the earlier suit and when he realized his mistake, the present suit was filed. Such an argument is clearly not borne out by the evidence on record. Perusal of the judgments and decrees dated 04.03.2004 and 26.05.2007 clearly reveal the specific stand of delivery of possession to the plaintiff being taken at the very outset. In fact, learned counsel for the appellants is unable to deny that the appellant no.1 had even taken a plea of the agreement to sell being compulsorily registrable in view of the delivery of possession.

There is also no merit in the argument raised on behalf of the appellants that the suit filed by the plaintiff is time barred. Culmination of the execution proceedings being fully satisfied on 23.10.2010 do not in any manner foreclose the right of the plaintiff to seek possession. It is a matter of record that the Executing Court while observing the execution proceedings to be satisfied has specifically and categorically observed that liberty is given to the plaintiff/decreed holder to file a separate suit for possession. I have carefully perused order dated 23.10.2010, passed by the learned Executing Court, which is attached as Annexure A-2 with this appeal. It is categorically observed therein that in case possession of the suit property has been taken forcibly or by any other illegal means from the judgment debtor, after passing of the judgment and decree in question, the Executing Court does not have any power to interfere in the matter and it is in this situation that liberty was afforded to the plaintiff to file the suit for possession. The present suit was

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filed on 20.11.2012 itself. Learned trial Court has rightly held the plaintiff entitled to the decree for possession of the suit land in order to enable the plaintiff to realise the fruits of the decree of the Civil Courts passed in his favour far back in the year 2004.

Reference by learned counsel for the appellants to the Khasra Girdawari Ex.P6 and Ex.P7 are clearly of no avail. Ex.P6 is the Khasra Girdawari for the years 1992 to 1997. The agreement to sell was admittedly executed on 17.11.1999. Possession of the property is claimed to have been given at the time of execution of the said agreement to sell. The Khasra Girdawaris are clearly for the period prior thereto. Merely reference to Khasra Girdawaris is of no avail. They do not in any manner come to the aid of the appellants, who are clearly trying to apply all kinds of means to deny the fruits of the earlier litigation in favour of the plaintiff having successfully taken over the possession of the property after passing of the decrees in the plaintiff's favour. The appellants are not left with any right what-so-ever to remain in possession of the property in question.

Both the learned courts below have rightly decreed the suit in favour of the plaintiff. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal. There is no illegality, infirmity or perversity in the impugned judgment and decree dated 02.08.2019, passed by the learned Additional District Judge, Ferozepur as well as judgment and decree dated 17.04.2017, passed by the learned Additional Civil Judge (Sr. Division), Ferozepur, which calls for any interference by this Court in second appeal.

No other argument has been raised.

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Judgment and decree dated 02.08.2019, passed by the learned Additional District Judge, Ferozepur as well as judgment and decree dated 17.04.2017, passed by the learned Additional Civil Judge (Sr. Division), Ferozepur are upheld.

Appeal is accordingly dismissed with no order as to costs.

October 17, 2019.
Sunil

(LISA GILL)
JUDGE

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