

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

RSA-4683-2017(O&M)

Date of decision:-3.5.2019

Shri Narata Ram Goel and others

...Appellants

Versus

Harish Khera

...Respondent

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

Present: Mr.S.P. Arora, Advocate
for the appellants.

Mr.V.K. Jindal, Senior Advocate with
Mr.Gopal Soni, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Harish Khera had brought a suit against defendants Narata Ram Goel as well as his son Rajiv and Smt.Santosh Rani besides M/s Shivalikk Ruber Industries through its partner Narata Ram Goel and Rajiv Goel craving for a decree for permanent injunction restraining the defendants and persons acting under them from interfering in any manner in peaceful possession and enjoyment of plaintiff and interfering in raising construction by plaintiff upon land measuring 5 kanals 19 marlas comprised in khasra No.109//6, 7 situated at village Dukheri, Tehsil and District Ambala shown by letters ABCDEF in the site plan.

As per version of the plaintiff, he had purchased 5 kanals 19 marlas of land from Smt.Vaishali Gulati wife of Sh.Jagmohan Gulati, resident of House No.579/9, Ambala City and Sh.Kamal Gulati son of Sh.Ascharaj Gulati son of Sh.Krishan Lal Gulati, resident of House No.863 Sector-7, Ambala City vide registered sale deed dated 31.8.2012 for a sum of Rs.15 lacs and his vendors had put him in possession of 5 kanals 19 marlas of land; that mutation No.1899 has been sanctioned in favour of the plaintiff; though the vendors had executed the sale deed out of various khasra numbers, but actual possession of 5 kanals 19 marlas of land of village Dukheri Tehsil and District Ambala had been delivered to plaintiff at the time of execution of sale deed and since then the plaintiff has been in possession of the said land; that the defendants had purchased 45 kanals 4 marlas of land in village Dukheri Tehsil and District Ambala and out of which, they had sold 28 kanals 3 marlas of land after carving out roads and the area under roads was 11 kanals, in that way the defendants were left with only 6 kanals 1 marla of land; out of that 6 kanals 1 marla of land, the defendants had constructed a godown over 2 kanals and 4 marlas 1 marla of land was lying vacant; that defendants had also purchased 10 kanals 16 marlas of land in village Dukheri, Tehsil and District Ambala, which was of different khewats and at a far of distance from the land in question; that the defendants had already raised construction on the land purchased by

them after carving out of the roads and have also sold the land in the form of plots without getting permission either from the Director Town and Country Planning and without getting any licence. According to the plaintiff, he requested the defendants to desist from their illegal acts and not to interfere in peaceful possession of the plaintiff by raising construction but defendants remained adamant to do so, giving rise to a cause of action to the plaintiff to bring the suit.

On notice, the defendants appeared and filed written statement contesting the suit taking various legal objections challenging maintainability of the suit alleging that the plaintiff was guilty of concealment of facts; that the suit was bad for non-joinder of necessary parties and for non-affixation of ad valorem Court fee. On merits, the defendants took up a plea that the plaintiff had filed the suit by misrepresenting, concealing and suppressing the true and material facts; that the plaintiff did not have the physical possession of any part of khasra No.109//6,7, village Dukheri, Tehsil and District Ambala; that the plaintiff allegedly purchased the land forming part of various khasra numbers at village Dukheri, Tehsil and District Ambala as per sale deed No.1046 dated 31.8.2012 i.e. khata No.23/29, khasra No.113//3, 8, 106//23/2, 11/3//4 measuring 31 kanals 01 marlas, khata no.546/864, khasra no.250 measuring 03 kanals 19 marlas, khata no.547/865 and 868, khasra no.106//18/1, 113//7/2, 106//18/2, 21, 113//14, 106//2/2, 113//1/1, 10/2, 18/1,

106//25/1 measuring 55 kanals 12 marlas, khata no.548/1/870, khasra no.106//22/1/24, 107//16/1 measuring 18 kanals 14 marlas, khata no.548/869, khasra no.89//2 measuring 08 kanal, khata no.549/871, khasra no.115//26, 119/26 measuring 26 kanals 03 marlas, khata no.550/872, 873 khasra no.141, 237, 252 measuring 04 kanals 09 marlas khata no.555/878 and 880 khasra no.113//6/3 measuring 05 manals 17 marlas i.e. 119/3706 part measuring 5 kanals 19 marlas; that the plaintiff had allegedly purchased land from Smt.Vaishali Gulati and Sh.Kamal Gulati, who had earlier purchased the land from Smt.Dilesh Rani, Smt.Savita Rani, S/Sh. Manoj Kumar and Vinod Kumar vide registered sale deed No.839 dated 27.8.2010; that in both the registered sale deeds No.1045 dated 31.8.2012 and 839 dated 27.8.2010, it is falsely stated that possession of khasra No.109//6, 7 measuring 3 kanals 19 marlas had been given; that defendants No.1 to 4 had purchased the land through eight different registered sale deeds w.e.f. 20.10.2003 to 1.9.2008 much prior to the sale deed No.839 dated 27.8.2010 and 1045 dated 31.8.2012 and they were in physical possession of the khasra Nos.109//6, 7 apart from other khasra number; that the plaintiff had intentionally not impleaded other co-sharrers of the land in dispute, as such the suit is bad for non-joinder of necessary parties. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

On the pleadings of the parties, following issues were

framed:

1. Whether the plaintiff is entitled to a decree for permanent injunction as prayed for? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
3. Whether the suit is bad for non-joinder of the parties? OPD.
4. Whether the suit has not been properly valued for the purposes of Court fee and jurisdiction? OPD.
5. Relief.

Both the parties led evidence in respect of their claims.

During the course of his evidence, the plaintiff got his statement recorded as PW1 besides examining Ms.Usha Kiran Goel as PW2, Sh.Sanjiv Singla as PW3, Sh.Ram Niwas as PW4, Sh.Pawan Aggarwal as PW5 and Sh.Vinod Malhotra as PW6.

On the other hand, defendant No.1 – Sh.Narata Ram appeared as DW1.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the defendants and against the plaintiff, issues No.2 to 4 against the plaintiff and in favour of the defendants. Resultantly, suit of the plaintiff was dismissed. This was so done vide judgment and decree dated 30.1.2017.

The plaintiff was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge,

Ambala, who vide judgment and decree dated 25.9.2017 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff and the respondents/defendants were restrained from interfering in the possession of the appellant over the suit land and from interfering in raising of construction by the plaintiff thereon subject to the condition that the plaintiff shall not be allowed to raise any objection in the partition proceedings with regard to the construction having been raised by him and from raising the ground that the particular land be excluded from partition on account of construction.

Now it was turn of the defendants to feel dissatisfied and they had filed the present regular second appeal before this Court. Notice was issued to respondent, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the appeal.

Though the trial Court had dismissed the suit filed by the plaintiff but that was on account of erroneous interpretation of factual and legal position. However, the District Judge, Ambala set right the wrong committed by the trial Court and by proper appraisal of factual position and correct interpretation of law came to the conclusion that the suit deserved to be decreed and decreed the same by setting aside the judgment and decree passed by the trial Court. It

has been observed by District Judge, Ambala that the possession of plaintiff over the suit land stood proved from various facts. Firstly, it was so mentioned in the recital of the sale deed dated 27.8.2010 Ex.P1 executed by Smt.Dilesh Rani in favour of vendors of the plaintiff namely Smt.Vaishali Gulati and Sh.Kamal Gulati and sale deed dated 31.8.2012 Ex.P5 executed by Smt.Vaishali Gulati and Sh.Kamal Gulati in favour of the plaintiff and in the sale deed Ex.P1 it was also mentioned that possession of the suit land had been handed over by the vendees to them. The value of mentioning of such facts in the recital of the sale deeds cannot be under estimated terming it as a weak type of evidence.

Furthermore, delivery of possession is established from the fact that vendors of the plaintiff had got the suit land demarcated before delivery of possession and demarcation, which was carried out in pursuance of order dated 4.3.2014 passed by the trial Court supports such plea of the plaintiff such report being Ex.P48. Then there is an admission by the defendant No.1 in his cross-examination when he got his statement recorded as DW1 that 5 kanals 14 marlas of land comprised in khasra No.109/7 was lying vacant and was surrounded by fencing of the wire. That points out towards the possession of the plaintiff. The defendant No.1 Narata Ram is also shown to have sold various plots out of chunk of land in his possession carving out streets and construction had been raised on

some portions. The defendant Narata Ram having himself sold land in the form of plots with construction being raised there and some area left as streets as admitted by him in his cross examination, he cannot object to plaintiff coming in possession of the suit land and raising construction over there. Learned District Judge, Ambala has referred to the legal position on the subject in detail while arriving at the conclusion that the plaintiff had been able to make out a case for grant of injunction in his favour. The defendant No.1 himself has carved out a colony over the area in his possession. He cannot possibly restrain the plaintiff from raising construction. Learned District Judge, Ambala after referring to various judgments on the subject has rightly observed that construction, if any, raised by the plaintiff on the suit land would not amount to ouster of any co-sharer nor would the value and utility of the property be diminished.

Learned counsel for the appellants has referred to judgments Rati Ram Versus Ramesh and Anr., 2013(36) RCR(Civil)578, Bal Kishan Versus Ram Singh, 2001(3) RCR(Civil)491, Bhartu Versus Ram Sarup, 1981 PLJ 204, RSA No.1910 of 2007 titled 'Pahalwan Chand Vs. Hans Raj and Ors.', decided on 13.10.2011 by this Court, SA No.904 of 1997 titled 'Inderjeet Singh Vs. Nasim Meman and Ors.', decided by this Court on 28.3.2017, RSA No.3701 of 2009 titled 'Mohinder Singh Versus Palwinder Singh and others', decided by this Court on

6.1.2010, RSA No.1681 of 2002 titled 'Dalel Singh and Ors. Versus Kalu and Ors.' decided by this Court on 11.2.2015, Union of India and others Versus Vasavi Co-op., Housing Society Ltd. and others 2014(2)RCR(Civil)76, Lajpat Rai Versus Smt.Vidya Wati, 1997(4) RCR(Civil) 130, M/s R.C. Sood Co. Versus M/s R.Kant & Company and another 1996(3) ICC 726 and Jagir Singh Versus Jagwant Singh, 2002(2) RCR(Civil)93.

However, those authorities do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the District Judge, Ambala.

No substantial question of law arises in this appeal.

The appeal stands dismissed accordingly.

3.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No