

RSA No. 5471 of 2018 (O&M)

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

**RSA No. 5471 of 2018 (O&M)
Date of decision: 27.11.2019**

Somdutt

... Appellant

Versus

Khushi Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

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

ARUN PALLI, J. (Oral)

The suit filed by respondent No.1-plaintiff was decreed by the trial court, vide judgment and decree dated 30.10.2015, and as even the appeal preferred by appellant-defendant No.1 against the said decree failed and was dismissed on 19.2.2018, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for injunction restraining the defendants from causing any interference in his possession over the suit property and raising any construction thereupon, and in the event he succeeds then a decree for mandatory injunction be issued restoring the site to its original position. In brief, the case set out by him was that Nandram had inherited a land comprised in khasra No. 493 (0-6), situated in village Bhadawas, Tehsil and District Rewari, from his father, namely Kaluram. The suit property was sold by Nandram to the plaintiff, pursuant to an agreement dated 27.11.1995 for a consideration of Rs. 2,000/-, and possession thereof was handed over to

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him. Whereafter, he constructed the said site and raised rooms, kitchen etc. A portion thereof was left as vacant space towards North and South direction for tying cattle. The description of the property alongwith its boundaries were reflected in the cause title of the plaint. However, defendants No.1 and 2 intended to dig foundation in the area shown in red colour in the site plan and raise construction, even though they had no right, title or interest in the suit property. Thus, the suit.

In the written statement filed by defendants No.1 and 2, they claimed to be the owners in possession of the suit property. They had even raised a boundary wall. Further, even if the plaintiff had purchased the suit property from Nandram, pursuant to any agreement, he ought to have got it registered. Therefore, the plaintiff could not claim title on the basis of the said document. Hence, the suit was liable to be dismissed.

In a separate written statement filed by defendants No. 3 to 5, they admitted the claim of the plaintiff, as also that he was the owner in possession of the suit property.

Upon consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that plaintiff had filed the present suit claiming himself to be the owner in possession of the suit property, comprised in khasra No. 493, on the basis of agreement dated 27.11.1995 (Mark A). An analysis of the said agreement revealed that it was executed by Nandram son of Kaluram in favour of the plaintiff, as he was the sole owner in possession of the suit property. Anil (PW1), son of late Nandram, testified in his deposition that plaintiff was the owner in possession of the suit property. Likewise, even the other sons of Nandram, namely Sunil and Ashok, who were arrayed as proforma defendants,

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conceded the claim of the plaintiff in their written statement. Although jamabandi for the year 2004-05 (Ex.PA) continued to reflect the name of Kaluram as sole owner in possession of the suit property, but the fact that Nandram as also his father, Kaluram, had passed away long ago, was admitted by Rajesh (DW2), who happened to be the brother of defendant No.1. Thus, it was concluded that for the purpose of determining the issue in question, it was safe to rely upon the agreement (Mark A), even though it was an unregistered document and remained unchallenged. Even otherwise, sons of Nandram themselves conceded that plaintiff was the owner in possession of the suit property, pursuant to the agreement (Mark A). Thus, there was nothing on record to disbelieve their version. None other than defendant No.1-Som Dutt (DW1), conceded in his cross-examination, that khasra number in which the suit property was situated was 218, measuring 2 marlas, and not 493, which as per Aks Sajra (Ex.PB), was situated towards West of the suit property comprised in khasra No. 493 and a pathway was in existence between khasra Nos. 218 and 493. Further, plaintiff was seeking injunction qua khasra No. 493, which was triangular in shape, as reflected in Aks Sajra (Ex.PB) and site plan (Ex.PW3/B) and not qua khasra No. 218. That being so, defendants No.1 and 2 were restrained from causing any interference in the peaceful possession of the plaintiff over the suit property as also from alienating the same except in due course of law.

It would be apposite to point out, at this juncture, that although the appellate court affirmed the findings recorded by the trial court, however, the decree dated 30.10.2015, rendered by the trial court, to the extent it was observed, '***except in due course of law***', was modified as defendants were neither owners nor in possession of the suit property and were merely

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strangers thereto.

Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

November 27, 2019

AK Sharma

Whether speaking / reasoned:	YES
Whether Reportable:	YES/NO