

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 5864 of 2018

Date of decision : July 17, 2019

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Rajwinder Singh

.....Appellant

Versus

Walaiti Ram since deceased through his LRs

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. D.S Gandhi, Advocate for the appellant.

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RITU BAHRI, J.

The appellant-plaintiff has come up in the Regular Second Appeal against the judgment of the trial Court dated 1.4.2014, whereby his suit for permanent injunction restraining the respondent-defendant from interfering in his possession of land (mentioned in detail in the head note of the plaint) has been dismissed and counter claim filed by the defendant Walaiti Ram seeking possession of the property measuring 10 marlas and for permanent injunction restraining Rajwinder Singh-plaintiff (respondent in the counter claim) from raising any construction has been decreed to the effect that the counter claimant is entitled to the possession of property measuring 10 marlas.

The suit of the plaintiff was that he was the owner in possession

of the suit land having purchased the same by means of a registered sale deed dated 09.08.2007 for a valuable consideration of Rs.1,75,000/- from Gursharan Singh son of Sukhdayal Singh through attorney Amarbir Singh. As per the plaintiff, the defendant extended him threats to dispossess him from the land and hence the suit was filed. Defendant also filed counter claim against the plaintiff on the similar lines of written statement. He claimed to be owner of the property measuring 10 marlas situated at Village Kala Ghannupur, Tehsil and District Amritsar. As per the counter claimant, he had purchased the suit property for a valuable consideration of Rs.5500/- on the basis of sale deed dated 18.6.1982 executed by Mangal Singh, Jaswant Singh sons of Sukhdayal Singh and Channan Kaur widow of Sukhdayal Singh in his favour. The sale deed referred to by the plaintiff dated 9.8.2007 is forged and fabricated document. Following issues were framed by the trial court:-

- 1. Whether the plaintiff is entitled to a decree for permanent injunction as prayed for ? OPP*
- 2. Whether the plaintiff has no cause of action to file the suit? OPD*
- 3. Whether plaintiff has no locus standi to file the present suit? OPD*
- 4. Whether suit is not maintainable? OPD*
- 5. Whether plaintiff has not come to the Court with clean hands and has suppressed the material*

facts from the Court, if so its effect? OPD

6. Whether defendant is entitled to a decree for possession of suit property in the counter-claim as prayed for? OPD

7. Whether defendant is also entitled to a decree for permanent injunction in counter-claim as prayed for? OPD

8. Whether counter-claim is legally not maintainable? OPP

9. Whether counter-claimant has no cause of action and locus standi to file the counter-claim? OPP

10. Whether plaintiff is bona fide purchaser of suit land for valuable consideration? OPP

11. Relief.

Before the trial Court, suit of the plaintiff i.e Rajwinder Singh was dismissed in default and issues no. 1 to 5 were not adjudicated. The evidence was examined by the trial Court with regard to issues no. 6, 7 and 10. In order to prove his case counter-claimant Walaiti Ram examined himself as CW-1, Jaswant Singh as CW-2, Rattanjit Patwari Circle, Kala Ghannupur as CW-3, Mukesh Kumar AHRC, Office of Registrar-cum-Deputy Commissioner of Police as CW-4, Amarjit Singh HRC DC Office, Amritsar as CW-5, Harinder Singh Patwari as CW-6. Rajwinder Singh got

examined himself as DW-1 and Amarbir Singh as DW-2 and closed his evidence. Trial court heard the counsel for the parties and gone through the evidence led by the parties. Family of Sukhdial Singh i.e the original owner of the property consisted of eight members i.e widow, five sons and two daughters as is evident from jamabandi for the year 1991-92 Ex. CW3/1. There was total area of land measuring 5 kanal 5 marlas bearing khasra no. 311 and 13 marlas came to the share of each member. There is entry of land measuring 10 marlas having been sold by Mangal Singh, Jaswant Singh sons of Sukhdayal Singh and Channan Kaur widow of Sukhdayal Singh to Walaiti Ram and mutation no.4077 in this respect has also been sanctioned in favour of counter-claimant Walaiti Ram. It is further revealed that vide mutation no.4718 land measuring 10 marlas have been sold by Channan Kaur and others to one Darshan Kumar. Again in the jamabandi for the year 1996-97 Ex.CW3/4, in column no.5, Walaiti Ram/counter-claimant has been shown to be owner of 10/95 share in khasra no.311/1 measuring 4 kanal 5 marlas whereas Darshan Kumar has been shown to be owner of land measuring 10 marlas bearing khasra no.311/2 and nature of both the khasra nos. have been shown as Gair Mumkin Makaan. In jamabandi for the year 2001-02 Ex. CW3/3, entry of Walaiti Ram and Darshan Kumar is there in column no.5, likewise in jamabandi for the year 2006-07 Ex.CW3/4 again the name of Walaiti Ram has been shown to be the owner of 10 marlas in column no.5 of the same. After the sale of property by Mangal Singh, Jaswant Singh and Chanan Kaur to Walaiti Ram and Darshan Kumar, Khasra no.311 measuring 5 kanal 5 marla was bifurcated into 2 killa nos. i.e

311/1 (4-15) and 311/2 (0-10) as is evident from jamabandi for the year 1996-97 which is Ex. CW3/2. Rajwinder Singh, respondent was claiming to have purchased land measuring 175 square yards from khasra no. 311/1 and 311/2. In the sale deed dated 09.08.2007 referred to by Rajwinder Singh, the owner of the property of southern side has not been shown and moreover ownership of one Darshan Singh has been shown towards western side, whereas Jamabandi shows the ownership of one Darshan Kumar. Gursharan Singh who is being alleged to be original owner has not been produced as a witness for the reasons best known to the respondent.

An inquiry was also held by the police with the help of revenue authorities in which Patwari had demarcated the land in possession of Rajwinder Singh in his report Ex.C-14, boundaries east west north south have been given by Patwari and total areas has been stated to be 10.50 marlas to be in possession of Rajwinder Singh. Further during the said inquiry, statement of Rajwinder Singh was also recorded as Ex. C-16 wherein he stated that he has purchased the plot measuring 7 marlas and in his cross-examination, he fairly conceded that he was present during the said inquiry conducted by the police department and also admitted his signature over the same i.e Ex. C14 as well as on his statement Ex.C-16. Hence in view of the report of the police, Rajwinder Singh was held to be in possession of 10 marlas of land. Moreover an attempt was made by Rajwinder Singh to get a mutation sanctioned in his favour qua plot alleged to have been purchased by him but the same was rejected by Assistant Collector First Grade Cum SDM (C) Amritsar vide his order Ex.C-10 giving

respondent Rajwinder Singh already stands in the name of Walaiti Ram. Keeping in view that Gursharan Singh had sold land measuring 6 marlas to Bhajan Singh as per entry of column no.5 of jamabandi for the year 2006-07 which is Ex.C3/4. He also admitted this fact before the police Department that he sold the land measuring 6 marlas to Bhajan Singh and 5 marlas 8 square yards to Rajinder Kumar vide Ex. C18 and the land measuring 17 marlas was partitioned by members of the family as has been admitted by Jaswant Singh CW-2 in his cross-examination and all those respective co-sharers, have raised a wall. Gursharan Singh has not been proved to be in possession of the land purchased by Rajwinder Singh nor the said fact has been stated by Rajwinder Singh in his statement. In view of the above detailed evidence led, counter-claim of the counter-claimant Walaiti Ram was decreed to the effect that he was entitled to possession of the property measuring 10 marlas bearing khasra no.311 situated at Village Kala Ghannupur, Tehsil and District Amritsar.

The lower appellate Court affirmed the findings of the Trial Court. The lower appellate Court dismissed the appeal of Rajwinder Singh by observing that there was inter se dispute between Rajwinder Singh and Walaiti Ram. The demarcation of the land had been got conducted by the police from the revenue officials which also showed that a portion of the land had been encroached upon by Rajwinder Singh. As such, the land, the dimensions whereof had been given in the plaint filed by Rajwinder Singh falls in the share of Walaiti Ram. Hence counter claim filed by Walaiti Ram has been rightly decreed that he is owner of 10 marlas of land as per sale

deed 18.6.1982 and Rajwinder Singh had encroached upon the land which was purchased by Walaiti Ram vide sale deed dated 18.6.1982. On the date, when the sale was made in favour of Rajwinder Singh i.e 9.8.2007, Gursharan Singh had no land which he could sell. Finding of facts recorded by both the Courts below do not require any interference. No substantial question of law arises for determination in the present regular second appeal. Hence the same is hereby dismissed.

July 17, 2019
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(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No