

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

**\* \* \* \* \***

**RSA No. 901 of 2018 (O&M)**  
Date of decision : August 19, 2019

**\* \* \* \* \***

Avtar Singh

.....Appellant

Versus

Rajwinder Singh and others

.....Respondents

**\* \* \* \* \***

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

**\* \* \* \* \***

Present: Mr. Deepak Aggarwal, Advocate for the petitioner.

**\* \* \* \* \***

**RITU BAHRI, J.**

**C.M No. 2194-C of 2018**

Prayer made in the application is allowed subject to all just exceptions.

**RSA No. 901 of 2018 (O&M)**

The appellant-plaintiff has filed the present appeal against the judgment dated 16.10.2017 passed by the Additional District Judge, Bathinda, whereby the appeal against the judgment and decree dated 24.7.2015 passed by the Additional Civil Judge, Senior Division, Phul was

dismissed. Vide the trial Court judgment dated 24.7.2015, suit filed by the plaintiff for permanent injunction restraining the respondents-defendants from interfering in plaintiff's peaceful possession of the plot and also to restrain them from dispossessing the plaintiff from the plot as well as from the house forcibly and alienating the suit property on the basis of forged and fabricated documents, had been dismissed.

The plaintiff were three brothers namely Avtar Singh, Bant Singh and Gulzar Singh. Avtar Singh, Bant Singh and Gulzar Singh were having joint property and same was partitioned between Avtar Singh and Bant Singh as Gulzar Singh was missing since long. The property of Gulzar Singh was partitioned by plaintiff and Bant Singh in equal shares. The case set up by the plaintiff is that the defendants in connivance with each other got prepared forged and fabricated documents and threatened to take the forcible possession of the suit property and to dispossess the plaintiff from the plot in dispute and the residential house. The case set up by the defendants was that Bant Singh son of Dial Singh son of Rattan Singh resident of Krarwala had executed a registered Will No.87 dated 29.5.2003 registered by Sub Registrar Rampura Phul in favour of defendant no.1 and as per the said Will, defendant no.1 became owner in possession of the suit property. Thereafter, defendant no.1 sold this property to Nek Singh, defendant no.2 vide writing dated 1.11.2013 for sale consideration of Rs.4,95,000/- in the presence of witnesses and possession was also delivered to defendant no.2. Defendant no.2, who was in the possession of the suit property after levelling the plot placed agricultural instruments in that plot. Plaintiff had earlier filed a civil suit no.62 dated 10.04.2003 in the Court of Additional Civil Judge (Sr. Division), Phul which was dismissed

on 1.6.2005. As per the defendants, the plaintiff had no concern with the present land. Following issues were framed by the trial Court:

- 1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP*
- 2. Whether suit of the plaintiff is not maintainable in the present form? OPD*
- 3. Whether plaintiff has no locus standi to file the present suit? OPD*
- 4. Whether plaintiff has concealed the material facts from the Court and has not come to the Court with clean hands? OPD*
- 5. Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD*

After hearing counsel for the parties and going through the evidence on record, both the Courts dismissed the suit of the plaintiff by giving concurrent findings of facts that the case of the plaintiff, that he had purchased the plot in dispute, has not been proved by leading any evidence. He took a stand that he had purchased the plot in dispute by way of oral transaction between him and Gulzar Singh. However, there was nothing on the file to prove his claim. He was totally silent about the time, month or year when the said transaction took place vide which he purchased the property in dispute from his brother Gulzar Singh. Previously, Avtar Singh, Bant Singh and Gulzar Singh were having joint property and same was partitioned between Avtar Singh and Bant Singh as Gulzar Singh was missing since long. The property of Gulzar Singh was partitioned by plaintiff and Bant Singh in equal shares. This fact is further reflected by the

site plan Ex.P1 that entire property which initially belonged to Gulzar Singh was divided into two parts. The property shown in green colour went to the share of Bant Singh. The plaintiff failed to lead any evidence to show title of the suit property which fell to the share of Gulzar Singh. Execution of the Will by Bant Singh in favour of Rajwinder Singh is admitted by the plaintiff in his cross examination. On the basis of Will Ex.D1 Rajwinder Singh Stepped into the shoes of Bant Singh who is brother of the plaintiff. When the property was belonging to Gulzar Singh then certainly it was to be inherited by plaintiff and Bant Singh. Plaintiff is already in possession of his share of the property of Gulzar Singh in which he had raised construction of his house. Remaining portion which fell into the share of Bant Singh shown in green colour in the site plan certainly was inherited by Rajwinder Singh on the basis of Will Ex.D1. Thereafter, Rajwinder Singh being owner had executed sale deed Ex. D2 in favour of defendant no.2 and since then defendant no.2 is in possession of the same. Plaintiff in his cross examination has admitted that after the death of Bant Singh, Rajwinder Singh is owner in possession of his property. The plaintiff had already filed a civil suit against Bant Singh and the same was dismissed by the learned trial Court. This fact is also admitted by the plaintiff in his cross-examination. Oral testimony of DW-1 Rajwinder Singh regarding possession is corroborated by DW-2 Harnek Singh and DW-3 Atma Singh. These witnesses have categorically stated on oath that at the time of execution of sale deed Ex.D2 possession of property in dispute was given to defendant no.2 by defendant no.1. The oral testimony of the plaintiff that he became owner of the suit property on account of oral transaction with Gulzar Singh has been rightly rejected by both the Courts below.

After hearing counsel for the parties and going through the judgments of the trial Court and lower appellate Court, no case is made out to interfere in the concurrent findings of the Courts below. No substantial question of law arises for determination in the present regular second appeal. Hence, the same is hereby dismissed.

August 19, 2019  
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( RITU BAHRI )  
JUDGE

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|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether reportable        | No  |