

RSA-6571-2018

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

**CM-18492-C-2018 in/and
RSA No.6571 of 2018
Decided on:09.01.2019.**

Amarjit Singh

.....Appellant

versus

Gurbachan Singh and others

....Respondents

CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN

Present: Mr.Sameer Dirwal, Advocate,
for the appellant.

DR.RAVI RANJAN, J. (Oral)
CM-18492-C-2018

This application has been filed seeking condonation of delay of 9 days which has occurred in filing the present appeal.

On perusal of the averments made in this application, this Court is of the opinion that the appellant was prevented by sufficient cause in preferring this appeal within time. In the result, this application is allowed and the delay on 9 days is hereby condoned.

RSA No.6571 of 2018

This appeal is directed against the judgment and decree passed dated 29.08.2018 passed by the Additional District Judge, Ferozepur in Civil Appeal No.64 of 2018 by which he has dismissed the appeal and affirmed the findings and decision of the trial Court rendered on 14.03.2018 in Civil Suit no.61-1 of 2015, vide which the suit was dismissed by the Additional Civil Juge (Senior Division), Ferozepur.

1. The plaintiff/appellant filed a civil suit for permanent

injunction restraining the defendants from demolishing the room marked as ABCD as per site plan constructed in the suit land measuring 3 marlas and further restraining the defendants from causing any kind of interference and from dispossessing the plaintiff from the aforesaid suit land situated within *laal dora* and revenue record of village Basti Piareana, Tehsil and District Ferozepur.

The plaintiff in the plaint has declared himself to be the owner of the suit land which was constructed for the purpose of storing fodder etc. having been purchased by him from his grandmother vide duly attested affidavit dated 29.07.2015. Further averments in the plaint is that Smt. Dayal Kaur had delivered the actual possession of the suit property in favour of the plaintiff and he was enjoying the same being the lawful owner. Smt. Dayal Kaur expired in the month of July. After her death, the defendants started interfering into the lawful possession of the plaintiff over the suit property. It has further been pleaded that on 13.07.2016, the defendants, in connivance with anti-social elements, had tried to construct the wall, bifurcating the half share of the property claiming to be the legal heirs of Smt. Dayal Kaur. They did not accede to the plaintiff's request not to do so and tried to demolish the roof over the room constructed over the suit land. However, the situation was saved due to timely intervention of the respectable persons of the society. The defendants refused to admit the claim of the plaintiff.

In the aforesaid facts and circumstances the suit was filed by the plaintiff.

2. The defendants appeared and filed a written statement and claimed that the affidavit is forged one, and, since Dayal Kaur was not the

owner of the property, she was incompetent to pass a better title than she herself possessed in favour of the plaintiff. It has further been stated that Budh Singh was the grandfather and owner of their property of which he was in possession. During his life time he separated his four sons by giving them specific portion and since then they were in the possession of the same. Since plaintiff's father also got a share, being son of Budh Singh, he cannot have any concern with the portion which has fallen in the share of the defendants.

3. In the background of aforesaid factual matrix, the trial Court framed following issues:

1. Whether the plaintiff is entitled to decree of permanent injunction as prayed for?OPP
2. Whether the suit is not maintainable in the present form?OPD
3. Whether the plaintiff has not come to the Court with clean hands?OPD
4. Relief.

4. The plaintiff-Amarjit Singh examined himself as PW2 and has examined Surjit Kaur as PW1, Poonam Vij as PW3, K.L.Sondhi as PW4 who is the draftsman of the affidavit.

To rebut the case of the plaintiff, the defendant-Gurbachan Singh examined himself as DW1, Santa Singh as DW2.

Upon appreciation of rival contention as well as evidence led on behalf of the parties, the trial Court dismissed the suit of the plaintiff. The appeal was preferred and that was also dismissed.

5. Upon hearing learned counsel for the appellant, it appears that

following facts are to be noted for consideration of *lis* between the parties.

Admittedly, Budh Singh who was the grandfather of the plaintiff as well as the defendants, was the owner of the suit property and was in possession of the same. The planitf has also admitted while being examined as PW2 that Budh Singh during his life time separated his four sons and had partitioned his property between them and the father of the plaintiff also got a share in that. Since Budh Singh did not keep with himself any part of property in his specific possession there is nothing on record to show that Budh Singh or after his death Dayal Kaur, who is the grandmother of both the parties, was in possession of certain property. The question would be, if she was not in possession of any property whether she was competent to transfer any piece of property in favour of one of his grand-sons? Answer has to be in negative as it is well settled that no one can transfer beyond his/her share or for which he/she having title and possession.

6. The matter can be looked into from another angle also as to whether there can be transfer by affidavit. Once the case of the plaintiff is that he purchased the land from grand-mother then he must disclose what was the consideration amount and not only that, in the event of transfer of ownership or right by sale, the State would be entitled for its stamp duty and transfer should be by any mode provided in the Transfer of Property Act, 1882, and it would have to be mandatorily required to be registered under the provision of the Registration Act, 1908. That admittedly not having been done, it creates serious doubt that such transaction actually took place. That apart, the plaintiff has not been able to produce any document in evidence in his favour to show that he actually came in possession of the property, for

example electricity bills etc. so that a decree of permanent injunction could be passed in his favour. It was incumbent upon the plaintiff to independently prove his possession over the suit land. In the suit the plaintiff has not sought any declaration regarding his title or possession. He has simply stated that he is in possession in the aforesaid manner but he has miserably failed to independently prove his title and possession over the suit land. Thus, in my considered opinion no ground or question of law could be set forth by the appellant so that this Court may interfere into the judgement and decree of both the Courts below as there is concurrent finding on the aforesaid facts.

In the result, being devoid of any merit, this appeal is dismissed. However, there would be no order as to costs.

It is made clear that no other ground has been raised by learned counsel for the appellant save and except those which have already been considered as above.

January 09, 2019

dharamvir

**(DR. RAVI RANJAN)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes
Yes