

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

RSA No.545 of 1992 (O&M)
Date of decision: 17th February, 2020

Dharam Singh

... Appellant

Versus

Ranjit (deceased) through LRs

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. S.P. Tiwana, Advocate for
Mr. R.S. Chahar, Advocate for the appellant.
Mr. Harsh Aggarwal, Advocate for the respondents.

FATEH DEEP SINGH, J.

The plaintiff (present respondent) Ranjit instituted against the defendant Dharam Singh (now appellant) a suit seeking decree for permanent injunction restraining the defendant from interfering in possession of the plaintiff in the property detailed in the head note/site plan annexed with the plaint. The claim is based on the averments that the disputed property bearing khasra No.1140 measuring 500 square yards has been purchased by the plaintiff through sale deed dated 06.02.1979 from its original owner i.e. the defendant over which the plaintiff has constructed shops etc. and installed a hand pump. The plaintiff further claims that he has constructed a Chuna Bhatti and therefore claiming to be the exclusive owner in possession, threatened

over the acts of the forcible occupation by the defendant and ouster of the plaintiff, present suit was filed.

The claim of the defendant in his stand besides that of maintainability and locus standi of the plaintiff is that the plaintiff with an ulterior motive under the guise of this suit is bent upon grabbing the property of the defendant. The defendant claims that out of khasra No.1140, the plaintiff has purchased land measuring 1 Bigha 1 Biswas through the claimed sale deed and claims that it was an unauthorized construction by the plaintiff in the area of the property belonging to the defendant after malafidely securing ad-interim injunction. The trial Court framed following issues:-

1. Whether the plaintiff is in possession of the suit property? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the plaintiff is estopped from filing the present suit by his act, conduct and acquiescence, laches and admission? OPD
4. Whether the plaintiff has concealed the real and true facts and if so, its effect?
5. Whether the defendant is entitled to special costs under Section 35-A CPC? OPD

The plaintiff examined Mool Chand Draftsman as PW1, himself as PW2 and Sant Lal as PW3 who happens to be the attesting witness of the sale deed Ex.P2.

The defendant on the other hand examined Draftsman Sat Narain as DW1 who proved the site plan Ex.D2, and proved copy of DDR dated 25.07.1987 through DW2 Lal Singh in respect of dispute over the construction. Photographer Ravi Sharma testified as DW3 proving photograph Ex.D1, negative Ex.DW3/A and receipt Ex.DW3/B. The same was followed by the testimony of DW4 Prabhu Dayal regarding recording presence and construction of Chuna Bhatti, and lastly DW5 Dharam Singh defendant stepped into the witness box and reiterated his case proving the factum of having sold the property to the plaintiff and its site plan Ex.D2, jamabandi Ex.D3, khasra girdawari for the years 1981-82 Ex.D4 and aksh shajra Ex.D5 and thereafter the evidence was closed.

The Court of learned Sub Judge, 1st Class, Gurgaon through judgment and decree dated 10.08.1989 dismissed with cost suit of the plaintiff. On appeal, the Court of learned District Judge, Gurgaon through impugned findings dated 03.03.1992 allowed the appeal and decreed the suit of the plaintiff restraining the defendant from interfering in the possession of the plaintiff of the suit property. The same is subject matter of challenge before this Court.

In view of the recent pronouncement in **‘Kirodi (since deceased) through his LR vs. Ram Parkash & others’** Civil appeal

No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the State of Punjab, that there is no necessity of framing substantial question of law for disposal of an appeal.

Upon hearing Mr. S.P. Tiwana, Advocate appearing on behalf of Mr. R.S. Chahar, Advocate for the appellant and Mr. Harsh Aggarwal, Advocate for the respondents and perusing the records of the case.

It is admitted stand of the two sides that the property in question was initially owned by the defendant Dharam Singh and which land as per the testimony of the draftsman Sat Narain DW1 proved through Ex.D2 was 3000 square yards, out of which 1/6th share measuring 500 square yards was sold by the defendant to the plaintiff through sale deed dated 06.02.1979 Ex.P2. To the specific query of the Court, it is admitted fact and could not be displaced by any of the counsel from the two sides and is well elucidated from the revenue records jamabandi Ex.D3, khasra girdawari for the years 1981-82 Ex.D4, aksh shajra Ex.D5 and so is the own document of the plaintiff that land was unpartitioned and out of 3000 square yards, land measuring 500 square yards was sold by the defendant to the plaintiff. What one can gather from the dispute is claim and counter-claim as to in which portion either the plaintiff or the defendant is in occupation as owner and what is the

precise situation at the ground level. The plaintiff has filed a pure simplicitor suit for permanent injunction and claims that he has purchased it from the defendant and therefore occupation of the plaintiff over 500 square yards is clearly a legal and legitimate one. It is well enunciated principle of law that in a simplicitor suit for permanent injunction, Court is not supposed to adjudicate upon the title. The parties ought to have got the land partitioned and in case anyone claims to have been denied his share in the property, to claim possession or declaration as may be the situation, but none of the reliefs has been sought by the parties to this lis. The learned District Judge, Gurgaon while disposing off the appeal of the plaintiff Ranjit has taken into consideration the cross-examination of the defendant whereby he has admitted that the draftsman has visited the spot and prepared the site plan which in fact the draftsman did not support and has accepted the fact that he cannot tell the length and breadth of the place and whether it was located in khasra No.1140 or 1139. The Court upon comparison of the site plan with the sale deed of the plaintiff had drawn the conclusion that three of the sides of the boundaries coincide as per the claim of the plaintiff and therefore, has upheld the claim of the plaintiff and has rightly reversed the findings of the trial Court on issue No.1. Since the plaintiff is shown and proved to be in possession of the property claimed by him and therefore, being an admitted fact of the defendant having sold his part of the property to the plaintiff, the plaintiff is certainly entitled to protect his possession

until or unless it is proved otherwise through recourse to law as detailed above. This Court is not inclined to accept the arguments of the learned counsel for the appellant and as such the appeal being hopelessly meritless stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 17, 2020
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No