

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

RSA No.1437 of 2017 (O&M)
Date of decision: 3rd February, 2020

Rajender Parshad Sharma

... Appellant

Versus

Satbir Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Akshay K. Goel, Advocate for the appellant.
Respondent – ex parte.

FATEH DEEP SINGH, J.

The plaintiff (now appellant) Rajender Parshad Sharma through his attorney Vijay Kumar Joshi filed a suit seeking decree of permanent injunction restraining the defendant Satbir Singh (since proceeded against ex-parte on his failure to appear in spite of service) from interfering in the peaceful possession of the plaintiff in the suit property detailed in the head note of the plaint as well as further restraining him from taking illegal possession of the same.

The concise facts were to the effect that the plaintiff was owner in possession of a plot measuring 400 square yards bearing khewat No.1059, khatoni No.1356 to 1359, measuring 39 kanals 13 marlas having purchased it through sale deed No.2794 dated 12.06.2006. Mutation No.17363 on the basis of this sale deed was duly entered in

favour of the plaintiff. The plaintiff claims that since he was residing in Kolkata, the defendant taking undue advantage of the same tried to take illegal possession of the property and hence the suit.

The defendant in his stand, besides having usual preliminary objections as to maintainability of the suit and proper Court fees having not affixed, claimed that the site plan was not correct and has rather set up a plea that through the agreement to sell dated 06.07.2006 he has purchased the property from Karambir Singh and constructed a courtyard with two rooms and therefore, denied the claim of the plaintiff. The trial Court framed the following issues:-

1. Whether the plaintiff is entitled for decree for permanent injunction on the ground taken in the plaint?
OPP
2. Whether the suit of the plaintiff is false, frivolous and against the law? OPD
3. Whether the suit is not maintainable in its present form? OPD
4. Whether the plaintiff has filed the present suit with malafide intention? OPD
5. Whether the plaintiff has not come to the Court with clean hands? OPD
6. Whether the proper Court fee has not been affixed?
OPD
7. Relief.

The plaintiff examined himself as PW-1, his attorney Vijay Kumar Joshi as PW-2, Ajeet Singh as PW-3 and Madan Singh as PW-4

and in the process proved documents Ex.P1 to Ex.P7. On the other hand, defendant testified as DW-1 and proved documents Ex.D1 and Ex.D2. The Court of learned Civil Judge (Sr. Divn.), Siwani, Camp at Bhiwani through judgment and decree dated 26.04.2013 dismissed the suit. Feeling aggrieved, the plaintiff filed an appeal and the Court of learned Additional District Judge, Bhiwani through impugned judgment dated 16.09.2016 dismissed the appeal of the plaintiff appellant. That is how the present regular second appeal has arisen.

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.

In spite of service none has appeared on behalf of the respondent. On hearing learned counsel for the appellant Mr.Akshay Kumar Goel, Advocate and on perusal of the records.

It is the claim of the appellant as has been contended that through sale deed Ex.P1, he had purchased the property subject matter of dispute through registered sale deed dated 12.06.2006 for which mutation Ex.P2 has been duly entered and incorporated in the jamabandi Ex.P2/A. On the other hand, the defendant claims that he has come to be the owner

in possession on the basis of an agreement to sell dated 06.07.2006 Ex.D2. Thus, from this irrefutable evidence it bears out that on the basis of sale deed dated 12.06.2006 the plaintiff has purchased the property regarding which mutation was duly sanctioned in his favour whereas the claim of the defendant respondent is based on an agreement to sell dated 06.07.2006. Thus, it is quite evident that the agreement to sell has come up after the sale deed was executed. It is not a registered agreement to sell which could bestow upon it to some extent legitimacy and legality. More so, it is well enshrined law that agreement to sell does not vest in the buyer any right, title or interest qua the property subject matter of the same except his right to get the contract enforced. Being a suit simplicitor for permanent injunction and the documents of the plaintiff having been exhibited without objection, needs to be legitimately taken as a piece of evidence to prima facie adjudicate the factum of possession. The two courts below merely on the basis of identity of the property have tried to sway aside claim of the plaintiff on such frivolous pretext. The sale deed has been duly given effect to in the revenue record by way of mutation and therefore, materially corroborates the claim of the plaintiff appellant. How the two courts below held it so merely on the premise that the property does not stand connected with the sale deed and the boundaries are altogether different, is totally ill-founded and unsubstantiated in the revenue records. The reasoning that has come forth is that the appellant resides in Kolkata and how he can claim to be in possession, is a

preposterous preposition. Once the vendee has purchased the property and put into possession, his possession becomes legal and legitimate as well as continuous and un-interrupted, and certainly needs to be acknowledged under the law and no injunction can be granted against the true owner. The findings of the two Courts below are certainly misconceived and wrong interpretation of the cogent and reliable evidence and the law, and thus, need to be set aside by way of acceptance of the present appeal.

Ordered accordingly.

(FATEH DEEP SINGH)
JUDGE

February 3, 2020
rps

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