

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

**RSA NO. 3035 OF 2018 (O&M)
DATE OF DECISION : 19.02.2020**

Ajit Singh

...Appellant

versus

Ajit Singh

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Vipin Mahajan, Advocate,
for the appellant.

ARUN MONGA, J. (ORAL)

CM NO. 7708-C OF 2018

For the reasons stated in the application, same is allowed and delay of 284 days in filing the appeal is condoned, subject to all just exceptions.

MAIN CASE

Having suffered concurrent adverse findings by the Courts below, the plaintiff/appellant herein is before this Court in Regular Second Appeal assailing the trial Court judgment and decree dated 09.12.2013, as upheld by the First Appellate Court vide its judgment and decree dated 11.01.2017.

2. Succinct factual matrix as noticed by the First Appellate Court first. Plaintiff is Ex-Military man retired as Subedar. He was owner in possession of the room and court yard marked as ABCD in site plan. He is now residing in Australia with

his family. During her life time, he delivered the possession of suit property to his mother who was residing there. His mother died in the month of November, 2011. He returned to India on 04.12.2012. The defendant in connivance with other persons namely Balwinder Singh, Dhian Singh, Ram Singh, Jagtar Singh, Mukhtiar Singh and Kirpal Singh, all residents of village Khunda, entered into the forcible and illegal possession of the suit property by demolishing one side of the wall and erecting a new gate. The plaintiff requested many a times to the defendants to hand over the possession to him but in vain. Hence, the suit.

3. Upon notice, defendant filed written statement taking preliminary objections to the effect that suit is not maintainable as the plaintiff had suppressed material facts. On merits, it was denied that plaintiff or his mother was ever in possession of the suit property. It was pleaded that one Balwinder Singh was owner in possession of the suit property, who had executed an agreement to sell dated 14.12.2002 in favour of the defendant after getting an amount of Rs.1,25,000/- as consideration. Since then the defendant is in possession of the suit property and using it as Haveli.

4. No replication was filed. Based on the rival pleadings of the parties, following issues were framed :-

- 1) Whether the plaintiff is entitled to get the relief of declaration as prayed for ? OPP

2) Whether the plaintiff is entitled to get the relief of mandatory injunction ? OPP

3) Whether plaintiff has no locus standi to file the present suit? OPP

4) Whether the suit of the plaintiff is not maintainable in the present form ? OPD

5) Relief.

5. In order to prove their case and to discharge their onus as per the issues framed *ibid*, the parties to the suit adduced their respective oral as well as documentary evidence.

6. Based on the collective evidence adduced by both the parties and upon appreciation thereof, the trial Court dismissed the suit of plaintiff.

7. The First Appellate Court agreed with the findings rendered by the trial Court and upheld the judgment and decree passed pursuant thereto.

8. I have heard learned counsel for the appellant and have gone through the case file carefully.

9. In its judgment, the trial Court, *inter-alia*, observed that the plaintiff in his cross-examination admitted that the property in dispute was purchased by the defendant from one Balwinder Singh by paying ₹1,25,000/- as sale consideration and now defendant is in possession over the said property. The said

fact is further corroborated by the evidence of PW-2 Vipin Kumar who also admitted in his cross-examination that after selling the suit property, Balwinder Singh started residing at Dhariwal which proved that Balwinder Singh was owner in possession of the suit property before it was sold to the defendant. This finding of fact was affirmed by the First Appellate Court.

10. In view of the reasons contained aforesaid and having perused the grounds of appeal filed herein, I am of the view that no fresh grounds have been raised warranting interference of this Court in present second appeal.

11. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below.

12. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

13. In view of my discussion above and the reasons recorded therein, no interference is called for by this Court. The instant second appeal being bereft of merit is accordingly dismissed.

- 14. Pending application, if any, also stand disposed of.
- 15. No order as to costs.

(ARUN MONGA)
JUDGE

FEBRUARY 19, 2020
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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |