

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

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**RSA No.270 of 2021 (O&M)
Decided on : 26.07.2021**

Bagga Singh and others

... Appellants

Versus

Pargat Singh and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Vikas Kumar, Advocate
for the appellants.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawal, J. (Oral)

The present regular second appeal has been filed by the unsuccessful defendants, who are aggrieved against the concurrent findings of the Courts below, whereby suit for possession and permanent injunction had been decreed in favour of the plaintiffs.

Counsel has vehemently submitted that the onus was wrongly put upon the defendants regarding the fact that the Gurudwara was existing on the land in question by way of encroachment and it was the case of the plaintiff himself as such and, therefore, the suit was not liable to be decreed.

A perusal of the paper-book would go on to show that the suit of the plaintiff was on the basis of sale deed dated 07.06.2004, whereby he had purchased 1 kanal of land comprising in Khasra No.91/85 min. The boundaries of the land also as such were also given in the head note of the plaint to show that it was bounded by constructed portions and abutting the Sirsa-Rania Road on the southern side situated in village Bhambhoor,

Tehsil and District Sirsa. Prior to the present litigation also a suit for permanent injunction restraining one Pyara Singh now deceased and Chandi Ram Singh-defendant No.1 had also been initiated. Initially the suit was dismissed on 15.05.2007, but in appeal the plaintiff was successful on 28.04.2009 wherein Chandi Ram and Pyara Singh were restrained from interfering and raising any construction over the suit land. It was the case of the plaintiff that he had gone abroad for a job and when he returned to India, he came to learn that Pyara Singh had constructed a residential house and a Gurudwara on the suit land and the symbol of Nishan Sahab had also been put and placed and in such circumstances he filed the present suit in the year 2012.

The sale deed was admitted by the appellants-defendants and the plea taken by the present appellants/defendants was that the Gurudwara's Managing Committee was in possession of the suit land since December, 1995. Further plea was taken that Avtar Singh the original vendor was not owner of any specific land and possession was not handed over to the plaintiff. Thus, the plea taken was that the Gurudwara was in possession for more than 12 years since December, 1995. The defendants were stated to be Committee members of the Gurudwara. The plaintiff examined himself and two other witnesses and tendered the copy of the sale deed Ex.PA on record, apart from proving that he moved complaints to police authorities Ex.P4 and the site plan Ex.P5 in the earlier suit.

The Trial Court while relying upon the statement of the

witnesses of the defendants wherein they admitted in cross-examination also that the Gurudwara Committee was not the owner of the land and none of the defendants were recorded as co-sharers of the suit land in the revenue record as per Jamabandi of 2012-2013 (Ex.D1) came to the conclusion that neither the persons had produced any record to show that they were the members of the Managing Committee. Therefore, the plea that the Gurudwara was in adverse possession was not accepted. It was held that even if the plaintiff is delivered possession of the suit land, it would be a matter inter se the co-sharers of the khewat in which the defendants were not shown in possession of the same. The plaintiff was free to seek possession of the suit land from his other co-sharers, in which none of the defendants were co-sharers. Resultantly, issue no.1 regarding the right to seek possession was decided in favour of the plaintiff. The onus of other issues being upon the defendants having not been pressed, were decided against the defendants while decreeing the suit.

The lower Appellate Court had also noticed that a specific plea was taken regarding the existing of Gurudwara by the defendants themselves that it was constructed upon a relevant khasra number by way of encroachment. Once the defendants themselves taken the plea that Gurudwara was on Khasra no.95/88, the onus had rightly been shifted upon them to prove the same, in order to defeat the suit of the plaintiff. The Appellate Court had further given them benefit as such that they can press for demarcation of piece of land in execution proceedings by the

Total Survey Machine. Another benefit which had been granted is that they are at liberty to purchase the suit land from the plaintiff as per prevailing market price by way of amicable settlement.

In such circumstances, this Court is of the opinion that the judgments of the Courts below do not suffer from any legal infirmity, which would warrant interference in a regular second appeal. The plaintiff is fighting for possession of the land since 07.06.2004 when he purchased the same which is specified in the sale deed and duly bounded as per the site plan. He has been denied the possession by the persons who are neither the owners of the land in question or co-sharers and thus have no locus-standi as such to challenge the findings of the Courts below, which have rightly decreed the suit of a person who is owner of the land and holds title of the same.

Accordingly, keeping in view the fact that there is no substantial question of law involved, no occasion arises to entertain the present regular second appeal and the same is dismissed in limine.

July 26, 2021
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No