

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

116

**CM-8808-CII-2021 in/and
CR No.1877 of 2021 (O&M)
Decided on : 20.09.2021**

Bhagwan Dass & another

... Petitioners

Versus

Jagdev Singh

... Respondent

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

Present: Mr.Parunjeet Singh, Advocate, for the applicant/petitioners.

G.S. Sandhawalia, J. (Oral)

CM-8808-CII-2021

Application for placing on record Annexures P-13 to P-18, is allowed, in view of the averments made in the application, duly supported by affidavit. Said documents are taken on record, subject to just exceptions. Office to append the same at appropriate place.

CM stands disposed of.

CR-1877-2021 (O&M)

Challenge in the present revision petition, filed by the plaintiff-petitioners, under Article 227 of the Constitution of India, is to the order dated 03.08.2021 (Annexure P-10) whereby the application filed under Order 39 Rules 1 & 2 CPC was dismissed. Similarly, the order dated 27.08.2021 (Annexure P-12) passed by the Addl.District Judge, Ludhiana dismissing the appeal, is also subject matter of challenge.

The reasoning which prevailed with the Courts below while dismissing the application under Order 39 Rules 1 & 2, is that the necessary three ingredients are not made out as the plaintiffs had relied upon sale deed dated 26.03.1993 wherein land falling in Khasra Nos.70 to 73 had been sold in his favour. The site-plan was examined on the record which had been furnished by the defendant who is an employee of the Ludhiana Improvement Trust. It was noticed that on an earlier occasion, there was litigation qua one Sunder Singh (wrongly mentioned as 'Surinder Singh') whereby he had been allotted plot No.1296-D on 03.02.1983, which was part and parcel of Khasra No.81.

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It was noticed that the deed which they were relying upon, TS-1 form of Municipal Corporation, Ludhiana in their favour whereby the property number had been mentioned as 1296-D which was forming part of Khasra No.81 and therefore, did not fall within the area which they had purchased pertaining to Khasra No.70 to 73. It was also noticed that notices had been issued by the Improvement Trust on 11.01.2021 and 04.02.2021 and admittedly, the suit was filed, thereafter. Resultantly, a finding was recorded that the plaintiffs are owners of other portions of land and the suit property did not fall in that khasra numbers. Accordingly, no case in favour of the plaintiff-petitioners was made out. In appeal, an additional finding had been noticed that the plaintiff-petitioners had suppressed the plot number of the property in dispute and also did not make the Improvement Trust as a party despite knowing the fact that notices for illegal encroachment were being issued by the Improvement Trust.

A perusal of the paperbook would also go on to show that the said notices have now been appended as Annexures P-8 & P-9. The said notices also talk about orders of the Court and to give possession of the plot to the applicant-allottee. The same were not accepted by the plaintiff-petitioners who had filed their suit thereafter on 22.02.2021. Interestingly, as noticed, the cause of action arose on account of the notices issued but the Improvement Trust was not made a party and only an employee had been made party.

In the written statement filed by the defendant-respondent, Jagdev Singh, it has been specifically mentioned that plaintiffs have constructed their house in the land falling in 1297-D and 1296-D is lying vacant. It was further alleged that they had made encroachment towards 1296-D. In the reply, it had further been mentioned that copy of the 3 sale deeds which had been relied upon by the plaintiffs were not traceable by the officials of the Sub-Registrar and neither the same had been entered in the Jamabandi for the year 2020-2021. It is also pleaded by the said defendant that he was only implementing the judgment and decree dated 29.07.2005 relating to Sunder Singh and the execution proceedings were at final stage and he has no personal interest in the said land.

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Thus, from the above facts, it would be clear that the plaintiff-petitioners, for the reasons best known to them, have not impleaded the Improvement Trust as a party which would be concerned authority to put-forward the correct picture, since notices were issued by the said authority. Thus, it is apparent that the plaintiffs are trying to conceal and not impleading the concerned persons as the Improvement Trust would be the best person to apprise the Court as to what was the exact status of the disputed land. In such circumstances, findings which have been recorded by the Courts below do not suffer from any illegality or infirmity which would necessitate any interference under the supervisory jurisdiction of this Court.

It is also pertinent to notice that even the plaintiffs have also admitted in the replication filed to the written statement that copy of the sale deed dated 26.03.1993 had been destroyed due to the water-logging in basement of the record room. Therefore, even the basis of their claim is doubtful and it would be a matter of evidence, as such, for the Trial Court as to whether the plaintiffs have any actual title in the absence of the said sale deeds also existing with the Sub-Registrar.

Resultantly, in view of the above discussion, finding no merit in the present revision petition, the same is dismissed in limine. Needless to say that anything said herein is only for the purpose of deciding the present revision petition.

September 20, 2021
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No