

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

RSA NO. 1521 OF 2021 (O&M)

DATE OF DECISION: 17.12.2021

Randhir Singh

...Appellant

Versus

Balbir Singh

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Ms. Gurnam Kaur Turka, Advocate,
for the appellant.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent findings by the two Courts below, the plaintiff is in second appeal before this Court assailing the trial Court judgment and decree dated 12.01.2017, as upheld by the learned First Appellate Court vide its judgment and decree dated 29.09.2021.

3. Briefly stated, facts as noticed by Courts below are that plaintiff/appellant had filed a suit for permanent injunction, as mentioned in the head note of decree sheet dated 12.01.2017 of the trial Court and raised construction of one room, one kitchen, wooden killa (tither), khurli etc, has a passage leading from street to Phirni, as shown in site plan. The said site is used by the appellant for several purposes. After receiving portion marked as 'ABCDEF' he dug the foundation and filled the same and raised wall at foundation level and BC part of site plan ABCDEF is

common wall of Amarpal, Gurmeet Singh and Rulda Singh. Plaintiff is in possession of the site for more than 25 years. He has constructed another residential house and his family has shifted to said house but he is still using the site in question. Defendants wanted to grab the said property of plaintiff and threatened to interfere in the peaceful possession of the property.

4. Upon notice, defendants appeared and filed written statement taking preliminary objections regarding estoppel from filing suit by his act and conduct; plaintiff has not come to the Court with clean hands; plaintiff has concealed material facts from Court; plaintiff has no cause of action to file the suit. On merits, it was denied that plaintiff is owner in possession of the property in dispute and rather, defendant No.2 is owner in possession of same. It was further pleaded that plaintiff is neither living in the property in dispute nor any of his articles was lying there. Electricity connection is also in the name of defendant No.2, who is making payments to PSPCL. It was further alleged that defendant No.2 is using the site as owner for the last more than 20-25 years. The other averments were denied.

5. Replication controverting the averments contained in the written statement and reiterating the stand taken in the plaint was filed.

6. Based on the rival pleadings, following issues were framed:

1. Whether the plaintiff is entitled for permanent injunction, as prayed for ? OPP.

2. Whether the plaintiff has not come to the Court with clean hands ? OPD.

3. Whether the suit property does not belong to plaintiff? OPD.

4. Whether plaintiff has no cause of action? OPD.

5. Relief.

7. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

8. On appraisal of evidence vis-a-vis pleadings, the suit of plaintiff was dismissed with costs.

9. Feeling aggrieved, the plaintiff preferred first appeal which was dismissed by the First Appellate Court.

10. I have heard learned counsel and perused the judgments of both the Courts below. Relevant part of First Appellate Court judgment, with which, *inter alia*, I am in agreement, is as below:

“15. In this case, the plaintiff wants to prove his bills and documents with regard to installation of electric connection, water connection and also telephone connection in the property in dispute. As per the appellant/plaintiff, these were got transferred in the newly constructed house in the year 2006. Whereas, this suit was filed by plaintiff in the year 2013. If the plaintiff was having in possession of these documents at the time of institution of suit, then, these documents should have been produced on the file immediately, when, evidence was being led. However, when plaintiff was being cross-examined, he has nowhere stated that there is telephone connection in the property in dispute. Meaning thereby, at the time of leading evidence during trial, the plaintiff has not acted with due diligence and has not produced the documents. So, application of the plaintiff for leading additional evidence is devoid of merits, hence dismissed.

16. *Learned Counsel for appellant has submitted that property was given to the plaintiff in family settlement, so, he has become owner. However, in my opinion, family settlement is not proved at all in the evidence. Even if, it is taken that it was an oral family settlement between the parties, even then, plaintiff is required to prove date and year in which, family settlement took place and who were the persons present at the time of family settlement. No Panch or Sarpanch of village has been examined. PW1 Setar Mohammad has been examined by plaintiff, who has stated that plaintiff has received the property ABCDEF shown in the site plan from his father and raised construction. However, he has nowhere stated that he was present at the time of alleged family settlement. The plaintiff has also examined Nirmal Singh as PW3. He is resident of Village Chattar Nagar, Tehsil Rajpura, District Patiala. He has also not stated that he was present at the time of family settlement. So, story of the plaintiff that he got the property in dispute in family settlement has not been established. If family settlement is not established. It is admitted case of the plaintiff that defendant no.1 Gurdev Singh is owner of property in dispute, then status of the plaintiff over the property in dispute is that of licensee, even though, he is son of Gurdev Singh, because, in property of the father, if it is not ancestral property, sons only reside as licensee and they cannot claim any proprietary right of the property. So, in view of above discussion, I do not find any illegality, perversity, infirmity in the findings of trial court on issues no.1 and 3, I concur with the same.*

17. *There is no challenge to the findings of trial court on issues no. 2 and 4, so, I concur with the same."*

11. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties.

12. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. The plaintiff/appellant also moved application under Order 41 Rule 27 CPC for leading additional evidence to prove the electricity connection, water connection and telephone connection. No ground is made to allow the application and the same is hereby dismissed. No interference is thus called for to disturb the concurrent findings of the Courts below. In this second appeal, no fresh ground worthy of interference is made out.

13. Furthermore, no question of law, much less substantial one, a sine qua non for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

14. In view of my discussion above and the reasons aforesaid, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

15. Pending application/s, if any, shall also stand disposed of.

16. No order as to costs.

DECEMBER 17, 2021
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No