

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

1. RSA No.452 of 2022 (O&M)

Krishan

... Appellant

Versus

Pritam Singh (deceased) th. LRs & others

... Respondents

2. RSA No.579 of 2022 (O&M)

Chakarwanti

... Appellant

Versus

Gurprit Singh (deceased) th. LR & others

... Respondent

Date of decision: 1st September, 2022

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vaibhav Sharma, Advocate for the appellants.

MANJARI NEHRU KAUL, J.

Both the above detailed Regular Second Appeals have been preferred by the plaintiffs against the concurrent findings of both the Courts below. Their suits for possession, declaration and permanent injunction, were dismissed by the learned Trial Court vide separate judgments and decrees dated 28.07.2015 and the findings recorded therein were affirmed by the learned Lower Appellate Court vide its judgments and decrees dated 11.10.2021. Both the appeals are being taken up together for disposal. The parties to the lis hereinafter shall be

referred to by their original position in the suit. For facility of reference, the facts are being taken from RSA No.579 of 2022.

The pleaded case of the plaintiff in brief may be noticed as thus:-

Giani Ram, grandfather of the plaintiff purchased suit property, duly described and depicted in the plaint, from the grandfather of defendants vide sale deed No.460, which was then challenged by the defendants by way of a Civil Suit No.338 of 1970 titled as 'Pritam Singh vs. Giani Ram'. The said suit was decreed and sale deed executed by Partap Singh in favour of Giani Ram was set aside. The matter went upto the Supreme Court of India, where a compromise took place between legal heirs of Partap Singh. Defendants No.1 to 6 filed execution of the judgment and decree against the plaintiff. The plaintiff filed objections but the same were dismissed and warrants of possession of the suit property were issued. The plaintiff was dispossessed to the extent of 49/487 share and possession of the suit property was delivered to the defendants on 27.03.2001. The plaintiff alleged that he had not acquired any part of the suit property purchased by his father from Partap Singh, predecessor in interest of defendants No.1 to 6, as subsequently the said land had been sold by his grandfather to Ram Sarup, who then came in possession of the same land described in the

sale deed No.460 dated 17.04.1960. Civil Suit filed by the plaintiff seeking declaration to the effect that the compromise entered into by the legal heirs of Partap Singh was not binding upon him, was rejected in an application filed under Order VII Rule 11 CPC. The plaintiff alleged that he had been illegally dispossessed from the suit property on the basis of the judgment and decree passed in Civil Suit No.338 of 1970, as it was not the land which was sold by Partap Singh to Giani Ram. Hence, the suit in question.

Both the courts below concurrently recorded the findings that the possession of the suit property was given to legal heirs of Partap Singh in execution of a decree in a lawful manner and the plaintiff had thus not been dispossessed illegally.

Learned counsel for the appellant has reiterated the stand taken before the courts below that he had been illegally dispossessed from the suit property in execution of suit No.338 of 1970 even though the suit property was different from the one which had been purchased by his grandfather Giani Ram from Partap Singh, i.e. the grandfather of the defendants. He vehemently argued that the courts below had ignored extensive documentary evidence led in support of his submissions, in as much as it stood established on record that the suit land which was purchased by Giani Ram from Partap Singh had already been transferred

in favour of Ram Sarup and Kishna, sons of Chhotu residents of village Beholi, District Panipat, who had further sold the land in favour of Dharam Singh, son of Ram Chander. Thereafter, Dharam Singh further sold the said land in favour of the defendant Ved Parkash and others. He submitted that the courts ignored the relevant revenue records which lend credence to his submissions that whole of the land had not been purchased from Partap Singh and, after consolidation, the position of the Khasra numbers was also changed.

I have heard learned counsel for the appellants and perused the relevant material on record.

The plaintiff stepped into the witness box as PW-1 and tendered his affidavit in evidence as PW-1/A. Besides this, he had also examined PW-2 Ram Niwas and PW-3 Jagbir in support of his averments. Defendants No.9 and 10, while filing their written statement, denied the claim of the plaintiff that he was owner in possession of the suit property by submitting that they were infact bona fide purchasers of the suit property, having purchased it for a valuable consideration.

This Court does not find any substance in the submission made by learned counsel for the appellant. No doubt, it was vehemently argued that the suit property was different from the one which had been purchased from Partap Singh by Giani Ram and the property purchased

vide sale deed Ex.P9 by Giani Ram had then been sold to one Ram Sarup vide sale deed Ex.P16, however, the plaintiff did not even produce any cogent or convincing evidence in support of his claim that his father Giani Ram had executed the sale deed Ex.P16 in favour of Ram Sarup qua the same land reflected in Ex.P9 and which was previously owned by Partap Singh. Still further, it was neither pleaded nor proved by the plaintiff that the suit property had been purchased by Giani Ram from some other person. Rather, it stands admitted in the plaint itself that Giani Ram had purchased the suit property from Partap Singh and even the sale deed executed by Partap Singh in favour of Giani Ram was set aside. As a result, the possession of the suit property was also handed over to the defendants after the cancellation of the sale deed. It would not be out of context to refer to the fact that though in his plaint the plaintiff had pleaded that Giani Ram had purchased 23 Bighas 8 Biswas of agricultural land vide sale deed bearing No.460, however there was no pleading to the fact that he had purchased 40 Bighas 13 Biswas of land from Partap Singh. No doubt, the plaintiff sought to amend his plaint to the effect that besides 23 Bignas 8 Biswas of land, Giani Ram had also purchased 40 Bighas 13 Biswas of land from Partap Singh, however, no permission was granted either by the trial Court or by this Court to amend the pleadings in the plaint to the said effect. Still

further, the plaintiff himself claimed that the possession of the disputed property had been taken away from him in execution of the decree passed in the civil suit No.338 of 1970. Hence, it was incumbent upon the plaintiff to produce all the relevant evidence on record to show the exact nature of the litigation between the defendants No.1 to 6, and the plaintiff and his predecessor, since it was his pleaded case that land other than the one which was subject matter of Ex.P9, had been given to defendants No.1 to 6. Without a doubt, the copies of judgments passed by the civil Court in suit No.338 of 1970 and the appellate Court would have been the best evidence in support of the case of the plaintiff, which however were withheld by him. It would also be relevant to notice that after possession of the disputed property had been taken away from the plaintiff on 27.03.2001 vide Rapat Roznamcha entry Ex.P14 and till the filing of the suit on 02.09.2011, the plaintiff never challenged the order passed by the Executing Court for delivery of possession of the disputed property in favour of defendants No.3 to 6 as no appeal/revision was preferred by the plaintiff. It is also a matter of record that the order passed by the Executing Court was not challenged in the suit in question. As the plaintiff did not assail the order of the Executing Court, which executed the decree passed in Civil Suit No.338 of 1970, a clear

inference can be drawn to the fact that the plaintiff had acquiesced to the correctness of the execution proceedings.

Learned counsel for the appellants has failed to satisfy this Court by pointing to any material on record that the conclusions arrived at by both the courts below were either contrary to the record or suffered from any material illegality. Consequently, both the instant appeals being devoid of any merit are dismissed in limine and the impugned judgments and decrees are hereby affirmed.

(MANJARI NEHRU KAUL)
JUDGE

September 1, 2022
rps

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