

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

RSA-1409-1990 (O&M)

Date of decision: 05.12.2022

Dilbagh Singh

...Appellant

Versus

Baru Ram

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Balbir Singh, Advocate for the appellant.

Mr. K.S. Dadwal, Advocate for the respondent.

H.S. MADAAN, J. (Oral)

Briefly stated facts of the case are that plaintiff Dilbagh Singh belonging to Ad-dharmi community, resident of Village Bachhoi (Majra Bhairu), Tehsil Garhshankar, District Hoshiarpur had brought a suit against defendant Baru Ram belonging to his own community and resident of his village seeking a declaration that he is owner in possession of ½ share of the suit land measuring 105K-10M, situated at Village Chak Harnoli, Tehsil and District Hoshiarpur and in the alternative, seeking a direction to the defendant to execute and get registered a sale deed in his favour on receipt of Rs.1000/- and for possession of the suit land. As per version of the plaintiff, the suit land was unallotted evacuee property and both the plaintiff and the defendant wanted to get that land in open auction, therefore, they had entered into an agreement that the bid would be given by defendant Baru Ram whereas consideration amount would be

paid by them equally and they would share the land allotted in public auction. In that way, when bid given in the name of defendant Baru Ram was accepted, the bid amount/price was shared by the plaintiff and the defendant and they entered in possession of the suit land in equal share, however, the mutation was sanctioned in the name of the defendant only. According to the plaintiff, he has been in possession of the suit land on the eastern side where the defendant is in possession of remaining $\frac{1}{2}$ share on western side. Furthermore, according to the plaintiff, his right in the suit land had been conceded by the defendant, vide writing before Gram Panchayat on 05.03.1984, vide which the defendant had agreed to execute the sale deed in his favour for Rs.1000/- which amount was to be paid by the plaintiff to the defendant in order to compensate him for payment of land revenue etc. It was further agreed that defendant would pay Rs.500/- to the panchayat for non performance of his contract. According to the plaintiff, he had been ready and willing to perform his part of contract and had obtained copy of jamabandi for getting the sale deed executed but defendant did not come forward to perform his part of the agreement, as such, plaintiff was compelled to knock at the door of the Court by way of filing civil suit against the defendant.

2. On notice, the defendant appeared and filed written statement, contesting the suit raising various legal objections to wit that the suit was not maintainable, since the plaintiff should have filed the suit for possession by way of specific performance; the suit was not valued properly for the purpose of Court fee and jurisdiction. On merits, the

defendant denied that the suit land had been purchased by him and the plaintiff jointly or that the plaintiff had paid $\frac{1}{2}$ of the auction money. He further denied that the plaintiff was in possession of any part of the suit land. According to the defendant, he had reclaimed the land himself by incurring expenditure since the plaintiff was not in possession of any part of the suit land, therefore, the suit in the present form at his instance was not maintainable. In the end, the defendant prayed for dismissal of the suit.

3. Plaintiffs filed replication controverting the allegations in the written statement, whereas reiterating the averments in the plaint.

4. From the pleadings of the parties, following issues were framed by the trial Court:-

- (1) Whether the suit for specific performance of the contract and possession of the land in suit is within time. OPP.
- (2) Whether the value of the suit for the purpose of court fees and jurisdiction is proper. OPP
- (3) Whether there was any agreement between the parties to the effect that in case, the bid of the defendant will be accepted the plaintiff and the defendant joint owners of the property to the extent of one half share each. OPP
- (4) Whether the plaintiff has been in possession of the suit land to the extent of one half share. If so, to what effect. OPP.
- (5) Whether the plaintiff has reclaimed any portion of the suit land. If so, to what effect. OPP.
- (6) Relief.

5. During the course of evidence of the plaintiff, he examined

Bakshish Singh, Gian Chand, Secretary of Gram Panchayat, Jagir Singh, Pritam Chand, Mohinder Pal to prove his case. He got his own statement recorded to corroborate his version as given in his pleadings.

6. In rebuttal, the defendant examined Piara Ram and Tarsem Lal to prove his case.

7. After hearing arguments, the trial Court decided issues No.1 to 4 against the plaintiff and in favour of the defendant. As a result of findings on issues, suit of the plaintiff was dismissed, vide judgment dt. 19.02.1987.

8. Feeling aggrieved, the plaintiff had preferred an appeal before District Judge, Hoshiarpur, which was assigned to Addl. District Judge, Hoshiarpur, who vide judgment and decree dated 09.03.1990 affirmed the judgment and decree passed by the trial Court and dismissed the appeal filed by the plaintiff.

9. Still feeling dissatisfied, the plaintiff has knocked at the door of this Court by way of filing the present Regular Second Appeal, notice of which was given to the defendant/respondent who has put in appearance through counsel.

10. I have heard learned counsel for the appellant/plaintiffs besides going through the record.

11. Here both the Courts below on analyzing the pleadings, the evidence adduced by the parties, in view of the factual and legal position found the case of plaintiff to be without any merit. It was observed that the plaintiff had not been able to clear the hurdle of limitation because the cause of action had first arisen to him on 22.01.1972 when the land was

allegedly purchased in joint auction whereas the suit was filed on 04.02.1985 i.e. after a period of about 13 years when the limitation of filing a suit for declaration is three years and similar is the limitation for filing a suit for specific performance. In terms of Section 3 of the Limitation Act which provides that every suit instituted after the prescribed period shall be dismissed, although, limitation has not been set up as a defence. On merits also, the plaintiff was not found to have any case because he is basing his claim on writing Ex.P1, the language of which shows that it is not an agreement which can be specifically got enforced rather it is mentioned therein that defendant would only be liable to pay penalty of Rs.500/- to the gram panchayat. The suit of the plaintiff can certainly be not decreed on the basis of such writing. The plaintiff could not lead any cogent or convincing evidence that bid in the auction had been given by the defendant to purchase the suit land on his behalf and that of plaintiff also or that plaintiff had contributed equally with defendant towards the payment of auction money. There is no mention of any such oral agreement in writing Ex.P1. The claim of the plaintiff that he is in possession of $\frac{1}{2}$ share of the suit land was not corroborated by producing any jamabandi or khase girdawri, rather claim of defendant only appears in jamabandi Ex.PW6/A showing him to be in exclusive possession. No receipt etc., has been proved in evidence to show that the plaintiff had made any payment to the defendant qua the suit land at any moment of time. I do not see any reason to differ with such concurrent findings recorded by the Courts below. I do not find any

illegality or infirmity in those judgments. No substantial question of law or fact is involved in this case. The appeal is found to be without merit and is dismissed accordingly.

05.12.2022

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(H.S. MADAAN)

JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No