

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

RSA-2331-2022(O&M)

Date of decision:-17.11.2022

Aadesh Kumar and another

...Appellants

Versus

Satish Khatana and others

...Respondents

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

Present: Mr.Amit Kumar Jain, Advocate
for the appellants.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Satish Khatana and Bhim Sen Bansal had brought a civil suit against defendants Dharampal, Anuj Kumar, Aadesh Kumar and Mukesh Sharma, craving for grant of permanent and mandatory injunction contending that Palam Vihar Extension, a residential colony was carved out at village Chauma, Tehsil and District Gurgaon (now Gurugram); plaintiff No.2 Bhim Sen Bansal had purchased two plots bearing Nos.65 and 66 in that colony from Sh.CSV Nair etc. vide registered sale deed dated 17.7.1995; plaintiff No.2 Bhim Sen Bansal had sold those plots to plaintiff No.1 Satish Khatana for a sum of Rs.2 lakhs vide agreement to sell dated 12.4.2005, receiving the entire consideration amount. At that time plaintiff No.2 Bhim Sen Bansal had executed a registered irrevocable General Power of Attorney in favour of plaintiff No.1 Satish Khatana along with an affidavit, receipt, possession letter and indemnity bond; plaintiff No.1 Satish Khatana had been in possession of plots in question since then, though formal sale deed

in his favour is yet to be executed; on 24.10.2007 at about 11:25 a.m., plaintiff No.2 Bhim Sen Bansal received an information that defendants Dharampal, Anuj Kumar, Aadesh Kumar and Mukesh Sharma were conspiring to grab the suit property; thereafter plaintiff No.2 Bhim Sen Bansal went to the spot and observed that some construction material was lying outside the suit property and some labourers were working there, digging the foundation; he was informed by the labourers that they had been employed by the defendants; thereafter, plaintiff No.2 Bhim Sen Bansal informed the police, though the police did not come to the spot; the labourers of defendants working there left that place; the matter was reported to the local police on 30.10.2007, where the defendants No.1 to 4 were called; they rather threatened the plaintiff; the plaintiff had informed the higher police officers also since local police was not taking any action in the matter, as such the plaintiffs filed the suit.

2. During the pendency of the suit, an application under Order 6 Rule 17 for amendment of plaint was filed that on account of non-granting of interim stay, the defendants had illegally encroached upon the land of plaintiffs, raising unauthorized construction thereon. A direction was sought to be issued to defendants to remove/demolish unauthorized construction from the suit property, further craving for possession of the plots along with mesne profits.

3. On notice, the defendants appeared and defendants No.1 to 3 had filed written statement contesting the suit raising various legal objections further contending that Sh.CSV Nair, acting as General Power of Attorney holder of Sh.Diwan Singh son of Sh.Ran Singh, Sh.Saroop

Singh son of Sh.Badlu Ram and Smt.Neeraj Bhola wife of Sh.J.S. Bhola had executed a sale deed bearing No.6858 dated 17.7.1995 in favour of plaintiff No.2 Bhim Sen Bansal for sale consideration of Rs.1,25,000/-; Sh.CSV Nair had illegally sold plots No.65 and 66 without any authority; as a matter of fact Sh.Diwan Singh, Sh.Sarup Singh and Smt.Neeraj Bhola had purchased agricultural for Sh.Manohar Lal etc. vide registered sale deeds bearing No.2023 dated 15.6.1992, 2102 dated 17.6.1992 and 4818 dated 12.10.1992; mutations were sanctioned on the basis of those sale deeds, in that way, the executants of General Power of Attorney had purchased agricultural land and he did not seek the permission from the competent authority to carve out any colony and sell the plots to the plaintiffs; as a matter of fact, defendants No.2 and 3 are true owners in possession having purchased the agricultural land bearing rectangle No.88, Killa No.23(8-0), 23(3-8) situated at village Chauma, Tehsil and District Gurugram from Smt.Jaishree Nasyar wife of Sh.D.N. Nasyar in the year 1992 and mutations were also sanctioned in their favour; plaintiff No.1 Satish Khatana is a land grabber wanting to encroach upon the property of defendants No.2 and 3. Denying the remaining allegations, such defendants prayed for dismissal of the suit.

Since defendant No.4 did not file any written statement, his defence was struck off.

4. Replication was filed. On the pleadings of the parties, following issues were framed:

- 1. Whether the plaintiffs are entitled to the relief of mandatory injunction as well as permanent injunction as prayed for? OPP.*

2. *Whether the plaintiffs are entitled to possession of the suit land as prayed for? OPP.*
3. *Whether the plaintiffs are entitled to recovery of damages to the tune of Rs.10,000/- per month w.e.f. November, 2009 till delivery of vacant possession of suit property? OPP.*
4. *Whether the present suit of the plaintiffs is not maintainable? OPD.*
5. *Whether the plaintiffs have not come to the Court with clean hands and have concealed the true and material facts from the Hon'ble Court? OPD.*
6. *Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD.*
7. *Whether the plaintiff has no locus standi to file the present suit? OPP.*
8. *Whether the suit of the plaintiffs is barred by limitation? OPD.*
9. *Whether the present suit is bad for non-joinder/mis-joinder of necessary parties? OPD.*

10.Relief.

5. The parties were afforded opportunities to lead evidence in support of their respective claims.

6. After hearing arguments, the trial Court come to the conclusion that defendants are illegally occupying the suit property having raised construction thereon without any authorization, as such, the suit of the plaintiffs was decreed granting them possession of the plots in suit property plots bearing No.65 and 66 total measuring 500 square yards situated within revenue estate of village Choma, Palam Vihar Extension,

Phase-II, Tehsil and District Gurugram.

A decree of mandatory injunction was also passed in their favour and against the defendants to the effect directing the defendants to remove/demolish all illegal, unlawful and unauthorized constructions from the suit property within a period of 30 days and in case of their failure to do so, the plaintiffs could get the same removed and recover the cost for the same from the defendants.

A decree for mesne profits @ 10,000/- per month w.e.f. 7.6.2014 till the date the defendants vacate and hand over the possession of the suit property to the plaintiffs with interest @ 8% per annum was also granted to the plaintiffs against the defendants. The suit was decreed with costs.

7. Feeling aggrieved by the said judgment and decree, defendants No.1 to 3 had preferred an appeal before District Judge, Gurugram, which was assigned to Additional District Judge, Gurugram, who vide judgment and decree dated 21.11.2016 decided the said appeal as well as appeal filed by defendant No.4 – Mukesh Sharma and appeal filed by defendants No.1 to 3 was dismissed and appeal filed by defendant No.4 was allowed and judgment and decree passed by the trial Court qua defendant No.4 was set aside.

8. The defendants No.2 and 3 are feeling dissatisfied with the said judgments and decrees passed by the Courts below and have knocked at the door of this Court by way of filing regular second appeal, praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit filed by the plaintiffs against

them be dismissed.

9. The appeal has been filed belatedly by 1330 days, though an application bearing CM-8076-C-2022 under Section 5 of the Limitation Act has been filed seeking condonation of such delay.

10. I have heard learned counsel for the appellants besides going through the record.

11. I find that with concurrent findings recorded by the trial Court and First Appellate Court observing that the defendants are in illegal possession of the suit property belonging to the plaintiffs and granting relief of possession of the plaintiffs directing the defendants to remove their unauthorized construction and granting mesne profits to the plaintiffs payable by the defendants, no merit in the present regular second appeal is found.

12. The judgments and decrees passed by the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

13. No substantial question of law or fact arises in this appeal.

14. Another main thing to be seen is that the present appeal filed is hopelessly time barred. Though an application under Section 5 of the Limitation Act has been filed seeking condonation of the delay of 1330 days contending that the delay was on account of the fact that after passing of the impugned judgment and decree by the First Appellate Court on 21.11.2016, the appellants were told by their counsel that it was respondent Dharampal, who is liable to pay the amount of mesne profits as he had encroached upon the land of the plaintiffs and it was only when

received summons from the Executing Court, the appellants came to know that they had been held liable to pay the mesne profits, thereafter they collected the documents and got the appeal filed.

15. The reasoning given in the application is least convincing.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

Section 5 of that very act provides that any appeal or any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

16. I do not find any reason to condone such huge delay of 1330 days in filing the regular second appeal which is liable to be dismissed for the reason of being time barred also.

17. Furthermore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments and decrees passed by the Courts below.

18. The appeal stands dismissed accordingly.

19. Since the main appeal stands dismissed, the miscellaneous applications, if any, stand disposed of accordingly.

17.11.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No