

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

RSA-5560-2016(O&M)

Date of decision:-9.12.2022

Ved Parkash Gupta

...Appellant

Versus

Pritam Nath Gupta

...Respondent

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

Present: Ms.Jasneet Mehra, Advocate for
Ms.Ruchi Gupta, Advocate
for the appellant.

None for the respondent.

H.S. MADAAN, J.

**CM-14557-C-2016 &
CM-14558-C-2016**

1. For the reasons mentioned in the applications, the same are allowed and delay of 3 days in filing and delay of 35 days in re-filing of the present appeal is condoned.

RSA-5560-2016(O&M)

2. Briefly stated, facts of the case are that plaintiff Pritam Nath Gupta had brought a suit against defendants Ved Parkash

Gupta, Pankaj Kumar and Dhanesh Kumar, all residents of District Faridabad seeking a decree for permanent injunction restraining the defendants from interfering into the peaceful physical possession of the plaintiff or from dispossessing him illegally and forcibly from the property mentioned in para No.2 of the plaint, further contending that if in case during the pendency of the suit, the defendants succeed in dispossessing the plaintiff illegally and forcibly, then in that eventuality a decree for mandatory injunction be passed in favour of the plaintiff against the defendants.

3. As per the version of the plaintiff, he is owner in possession of property bearing plot No.19 measuring 1555.5 square yards situated at DLF Industrial Estate, Phase I within the revenue estate of village Mewla Maharajpur, Tehsil and District Faridabad; one Raja Upendra Kishan Kaul son of late Raja Sir Daya Kishan Kaul, a resident of 39 Rajpur Road, Delhi had purchased property bearing plot No.19 measuring 1555.5 square yards situated at DLF Industrial Estate Phase 1 within revenue estate of village Mewla Maharajpur, Tehsil and District Faridabad from M/s DLF United Limited vide sale deed dated 19.12.1973 duly registered with the office of Registrar, Delhi having document No.583 dated 29.12.1973; the plaintiff and his father namely Amar Nath had purchased this property from Raja Upendra Kishan Kaul in equal shares vide sale deed duly executed and registered with the office of Sub Registrar,

Ballabgarh bearing document No.8551 dated 12.3.1980; father of the plaintiff relinquished his half share in favour of the plaintiff qua the suit property vide relinquishment deed duly executed and registered with the office Registrar, Delhi bearing document No.1173 dated 12.4.1996; the plaintiff mostly remains out of India on account of assignment in USA and he had employed a servant, who used to take care of the plot but defendants wanted to grab the property in question and tried to break open the locks of the gate and misbehaved with the servant of the plaintiff and tried to prepare forged document with malafide intention and accordingly the servant of the plaintiff had informed the son of the plaintiff in the first week of July, 2009; the son of the plaintiff visited the property in question, thereafter filing a complaint to SSP, Faridabad on 3.7.2009 as well as submitting a complaint at Police Station Sector 31, Faridabad, on the basis of which FIR No.174 dated 11.7.2009 under Sections 420, 462, 471, 447, 511, 120-B IPC was registered against defendant No.1; the son of the plaintiff had applied for issuance of clarification certificate regarding the property in question before the Chief Town Planner, MCF, Faridabad, which was issued vide memo No.MCF/CTP/2009/662 dated 2.7.2009.

As per the case of the plaintiff, there was no industrial plot bearing No.19-B in DLF Industrial Area Phase I and Phase II, Faridabad; the defendants are head strong persons and in collusion

with each other tried to interfere into physical possession of the plaintiff and to dispossess the plaintiff from the property in question, giving rise to a cause of action to the plaintiff to file the present suit.

4. On notice, defendants No.2 and 3 appeared but they did not file any written statement, as such their defence was struck off vide order dated 30.7.2010. Subsequently they absented from the Court and proceeded against ex-parte.

5. In the written statement filed on behalf of defendant No.1, he has raised preliminary objections with regard to maintainability of the suit, locus standi of the plaintiff to bring the suit contending that the plaintiff has not approached the Court with clean hands. On merits, such defendant denied that plaintiff came in possession of the suit property; rather alleging that under the pretext of dispute of identity the present plaintiff wants to encroach upon and illegally interfere into the property owned and possessed by the firm of the defendant; the firm of the defendant has erected a boundary wall with two gates, one security guard room and one hall also and the defendant is absolute owner and in possession of the property in question and the present plaintiff through his son in collusion with the local police lodged the FIR. It is further submitted that firm of the defendant is owner and in possession of the property in question. It being so, there is no question of plaintiff being in possession of the suit property or defendant interfering therewith. Such defendant

prayed for dismissal of the suit.

6. On the pleadings of the parties, following issues were framed:

- 1. Whether the plaintiff is entitled to the decree of permanent injunction and mandatory injunction as prayed for? OPP.*
- 2. Whether the suit of the plaintiff is not maintainable? OPD.*
- 3. Whether plaintiff has no cause of action and no locus standi to file the present suit? OPD.*
- 4. Whether plaintiff has concealed material facts from Court? OPD.*
- 5. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties? OPD.*
- 6. Whether the plaintiff is estopped from filing the present suit? OPD.*
- 7. Whether the suit of the plaintiff is time barred? OPD.*
- 8. Relief.*

7. The parties led evidence in support of their respective claims.

8. After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiff and against the defendants, issue No.2 was decided against the defendant and in favour of the plaintiff, issue No.3 was decided in favour of the plaintiff and against the defendants, issues No.4 to 7 were not

pressed by the counsel for appearing defendant during the course of arguments and those were disposed of accordingly. Resultantly, the suit of the plaintiff was decreed and defendants were restrained from interfering into the peaceful possession of the plaintiff or from dispossessing the plaintiff illegally and forcibly from the suit property vide judgment and decree dated 25.7.2014.

9. Feeling aggrieved by the said judgment and decree, the defendant No.1 – Ved Praksh Gupta had filed an appeal in the Court of District Judge, Faridabad, which was assigned to learned Additional District Judge, Faridabad, who vide judgment and decree dated 7.5.2016 dismissed the appeal.

10. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendant No.1 has filed the present regular second appeal before this Court, notice of which was issued and the respondent-plaintiff appeared through counsel initially. However, there was no representation on his behalf on 2.12.2022, and similar is the position today.

11. I have heard learned counsel for the appellant besides going through the record.

12. Here both the Courts are unanimous as regards plaintiff being in legal possession of the plot in question, which he is entitled to protect against the defendant. As regards the plot No.19-B claimed by the appearing defendant, referring to certificate Ex.P6 issued by

MCF, the trial Court had observed that there is no industrial plot No.19-B in the DLF Industrial Area, Phase I and Phase II, Faridabad. Similarly in the lay out plan of DLF Ex.P5, there is no mention of plot No.19-B. The apprehension of the plaintiff has been that defendants want to take possession of the suit property illegally and forcibly by making use of muscle power. Thus there is only Plot No.19 and no such plot No.19-B is there. The sale deed got executed by defendant bearing No.8275 dated 18.8.2006 with regard to Plot No.19-B does not confer upon him any valuable right with regard to plot No.19. The defendant No.1 Ved Parkash claimed to have purchased plot No.19-B measuring 1664.37 square yards from one Dhanesh Kumar on 18.8.2006. The matter had gone to the police also and as a result of investigation conducted by the police existence of plot No.19-B as claimed by the defendant was not found to be there in DLF. For ready reference, the operative part of the judgment by the trial Court is being reproduced as under:

After hearing Ld. Counsel for both the parties, as well as after going the records on the file this emerges that the suit property is plot No.19 and the defendant is referring plot no.19-B. This itself clears that the suit property for both the parties is different. Moreover, the plaintiff has filed many documents to prove that there was no plot no.19-B in existence but it is only plot No.19. So there was no need to seek

declaration regarding the plot no.19 as there was no dispute over it. The authority of Hon'ble Surpeme Court (supra) also supports this and in such cases there is no need to ask for declaration and only relief of injunction is sufficient. On the point of possession the Ld. Counsel for the defendant took the aid of FIR which was lodged by the plaintiff against him under Section 447 IPC etc., and stated that this section in itself proves that the complainant is not in the possession but on appraisal of Section 447 IPC is becomes clear that it is not necessary to remain on the land of the complainant for filing the complaint under Section 447 IPC but only trespassing would also attract that section. On the other hand plaintiff has proved is possession on the suit property and this make him entitled for the relief.

13. In view of the above discussion, this issue is decided in favour of the plaintiff and against the defendant.

13. Learned Additional District Judge, Faridabad while hearing the appeal found himself in agreement with the observations by the trial Court with regard to plaintiff being in possession of plot in question and defendants threatening to interfere in the same on the basis of sale deed in favour of defendant No.1, which relates to plot No.19-B, which is non-existent in the area of DLF as dealt with by

the trial Court in a detailed manner. Therefore, the plaintiff was rightly found entitled to a decree for permanent injunction as prayed for.

14. Both the judgments and decrees are quite detailed and well reasoned passed as a result of proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. No substantial question of law or fact arises in the appeal.

15. Findings no merit in the appeal, the same stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

9.12.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No