

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

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RSA-661-2022 (O&M)
Date of decision: 25.03.2022

Man Singh and another

.....Appellants

Versus

Kreshan @ Roshan Lal

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. K.C. Bhatia, Advocate for the appellants.

MANJARI NEHRU KAUL, J. (ORAL)

1. The appellants-defendants No.2 and 4 are assailing the concurrent findings recorded by both the Courts below in favour of the respondent-plaintiff in a suit for mandatory injunction. The suit for mandatory injunction was filed by the respondent-plaintiff for directing defendants No.1 to 4, namely Kuldeep Singh @ Pappu, Balkishan @ Tilu, Parwara and Mann Singh to hand over the vacant possession of the suit property (bara measuring 0K-7M comprised in Khewat No.318/285, Khatoni No.545, Khasra No.306, situated in village Singhra, Tehsil Nissing, District Karnal vide jamabandi for the year 2006-07) and removal of construction raised thereon.

2. For the sake of convenience, the parties to the lis, hereinafter shall be referred to by their original position in the suit.

3. Defendant No.2-Balkishan @ Tilu and defendant No.4-Man Singh contested the suit by asserting that they were bonafide purchasers of the suit property, having purchased the same for a sale consideration of Rs.2,10,000/- each, from one Tarsem Singh son of

Ajaib Singh. After receiving full and final payment of the sale consideration, said Tarsem Singh delivered actual and physical possession of the suit property to defendants No.2 and 4 and also executed an agreement to sell dated 23.01.2014 which in turn was duly attested from a public notary at Karnal. Ever since 23.01.2014, defendants No.2 and 4 had been in actual and physical possession of the suit property as owner thereof.

4. Both the Courts below concurrently recorded findings of fact that the plaintiff successfully proved that he along with proforma defendants was the owner of the property which was in possession of defendants No.1 to 4. The plaintiff himself and Bhaktawar stepped into the witness box as PW1 and PW2 and tendered copy of passbook of land holding as Ex.P1, Mutation No.126 as Ex.P2, Hindi Translation Mutatioin No.126 as Ex.P2/T, copy of Aks Sajra as Ex.P3, copy of jamabandi of 2016-17 as Ex.P4. Copy of khasra girdawari as Ex.P5, copy of death certificate of Gendi Devi as Ex.P6, copy of Aadhaar Card of Roshan Lal as Ex.P7, copy of judgment and decree dated 02.04.2014 as Ex.P8 and P9 and closed the evidence. The defendants examined Mann Singh as DW1, Bal Kishan as DW2 and Amar Singh as DW3 and proved original agreement Ex.D1, Electricity bills as Ex.D2 to D8, site plan Ex.D9, copy of agreement Mark-P, original agreement Ex.D10 and site plan as Ex.D11. Thereafter, defendants No.2 and 4 tendered electricity bills as Ex.D10 to D18 and closed their evidence.

5. I have heard learned counsel for the appellants-defendants No.2 and 4 at length and perused the paper book.

6. Learned counsel while drawing the attention of this Court

to the impugned judgment and decree passed by the Courts below has argued that both the Courts failed to appreciate that the suit filed by the plaintiff was for mandatory injunction and not a suit for declaration with possession. Hence, the plaintiff was required to prove that the defendants had forcibly dispossessed him from the property in dispute. It was also argued that no complaint whatsoever or any representation had been brought on record to support that the plaintiff had been ever dispossessed from the suit property. It was also argued that the Courts below ignored the specific plea taken by defendants No.2 and 4 that they both were the absolute owners in possession of (3 marlas each out of 7 marlas) suit property, on which houses already stood constructed by its earlier owner Ajaib Singh, which in turn stood fully proved from the agreement to sell as well as the electricity bills on record. Learned counsel still further argued that the Courts below failed to consider that the jamabandi and mutation entries as well as passbook of land holdings produced by the plaintiff was not sufficient to prove that the suit property belonged to them as the same was in abadi deh in lal dora of the village and the houses were constructed by its previous owner Ajaib Singh which as already submitted earlier stood proved from the agreement to sell in favour of defendants No.2 and 4. Learned counsel went on to argue that the electricity bills in the name of the previous owners i.e. Ajaib Singh with respect to Bara No.306 of land measuring 7 marlas, of which defendants No.2 and 4 were subsequent owners, was exhibited as Ex.D2 to D8 and Ex.D10 to D18 for the period from 12.12.2016 to 17.04.2018, which clinchingly established that the possession of the suit property was with defendants No.2 and 4 and as

such they were owners in possession of the same.

7. This Court does not find substance in the aforesaid submissions made by the learned counsel for the reasons to follow.

8. The case of the plaintiff was that he along with proforma defendants was owner of the suit property as reflected in the jamabandi for the year 2006-07. Defendant No.1 Kuldeep Singh and his brother Tarsem Singh had tried to interfere in the possession of the plaintiff and the proforma defendants as a result of which the plaintiff had earlier filed a suit for permanent injunction on 18.12.2012 which was decreed on 02.04.2014. However, using muscle power, the plaintiff was dispossessed by the defendants on 03.08.2014 from the suit property and a construction was then raised on it. On 17.08.2014, a panchayat was convened between the parties wherein the defendants were asked to restore possession of the suit property but in vain.

9. Admittedly, the suit property was previously owned by one Smt. Gendi which has not been disputed by defendants No.2 and 4 as it is their own case that Ajaib Singh, father of Tarsem Singh had purchased it from Gendi in the year 1985 and thereafter Tarsem Singh son of Ajaib Singh had sold it to them. Defendants No.2 and 4 in support of their case have heavily relied upon an agreement between Gendi and Ajaib Singh, father of Tarsem Singh, however, the said agreement is just a photocopy of the original agreement alleged to have been executed by Gendi in favour of Ajaib Singh. The said agreement was admittedly an unregistered agreement which was not even exhibited during trial but placed on record as Mark-P. Hence, it would be inadmissible in evidence for want of proof. Similarly, much reliance

was placed upon Ex.D1 and Ex.D10, however, even they being unregistered documents cannot be taken into consideration. Besides the abovesaid unregistered agreement no other documentary evidence was tendered by defendants No.2 and 4 in support of their case that Tarsem Singh, son of Ajaib Singh was owner of the said property. It would also be pertinent to observe that the plaintiff had filed a suit prior to the suit in question seeking permanent injunction to injunct defendant No.1 Kuldeep Singh and his brother Tarsem Singh from interfering in his and in the possession of the proforma defendants over the suit property which came to be decreed on 02.04.2014 vide judgment Ex.P8. No doubt, defendants in the suit for permanent injunction were proceeded against ex-parte, however, since no application for setting aside the ex-parte order was moved by them, as a result thereof the judgment dated 02.04.2014 attained finality. Therefore, in the absence of anything to the contrary on record, it leaves no manner of doubt that on 02.04.2014 the plaintiff and the proforma defendants were in possession of the property and it was only thereafter that they were dispossessed.

10. As far as the reliance placed upon electricity bills Ex.D2 to D8 and D10 to D18 is concerned, these too would be of no avail to defendants No.2 and 4, as no official from the electricity department was examined to prove the electricity connection installed in the suit property.

11. Upon being pointedly asked, learned counsel for the appellants failed to refer to anything on record to show that the conclusions so arrived at by the Courts below were either contrary to the record or suffered from any material illegality. Still further, no

question of law, much less, substantive arises for consideration in the present appeal. The appeal, being devoid of merit, is accordingly dismissed. The judgments and decrees of the Courts below are affirmed.

25.03.2022

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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