

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

(123)

**RSA No.2611 of 2022 (O&M)
Date of Decision 05.12.2022**

Balbahadur Singh

...Appellant

Versus

Raghubir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Avtar S. Khinda, for the appellant.

HARKESH MANUJA, J.(ORAL)

By way of present appeal challenge has been made to the judgment and decree dated 15.10.2022 passed by the Learned Additional District Judge, Kapurthala, confirming the judgment and decree dated 15.10.2022 passed by the Court of Civil Judge (Jr. Divn.), Phagwara, arising out of a suit for permanent injunction filed at the instance of appellant/plaintiff.

Brief facts of the case are that the appellant/plaintiff filed a suit for permanent injunction claiming himself to be in possession of the suit property for the past almost two years stating therein that the same was handed by respondents-defendants with an assurance of alienating the suit property to him for a sale consideration of Rs.5,00,000/- to be paid at his convenience. It was further pleaded that though the appellant/plaintiff was ready and willing to pay the sale consideration, however, respondent No.1/defendant No.1 started claiming huge amount of Rs.40,00,000/-, besides threatening to dispossess him from the suit property thereby compelling him to file the suit.

Upon notice, respondent No.1/defendant No.1 filed a written statement denying the factum of having made any kind of promise of alienating the suit property in favour of appellant/plaintiff. On the other hand, it was submitted that the appellant/plaintiff was allowed to live in the house in question only as a caretaker without payment of any rent or lease money etc. It was also pleaded that the house in question was jointly owned by respondent No.1 along with his four brothers and two sisters being the ancestral house inherited from their fore-fathers.

Disbelieving the plea raised at the instance of appellant/plaintiff about the oral commitment allegedly made between the parties regarding alienation of the suit property, the trial Court dismissed the suit vide judgment and decree dated 28.01.2019. Aggrieved against the same, the appellant filed first appeal, however, the first Appellate Court vide its judgment and decree dated 15.10.2022, affirmed the decision made by the trial Court.

By way of present appeal, challenge has been made to the judgment and decree passed by both the Courts below. It has been submitted on behalf of appellant that the possession of the property in question was delivered by respondent No.1/defendant No.1 i.e. owner under an oral settlement that the appellant would purchase the same against payment of Rs. 5 Lakhs to be made as per his own convenience and the said agreement was duly proved on record through oral evidence i.e. the deposition of the appellant/plaintiff himself as PW-1 besides the statement of PW-2 Avtar Singh who happens to be residents of the same village. Counsel for the appellant also contends that having found the appellant/plaintiff to be in possession of the suit property, prayer for grant of permanent injunction against forcible dispossession could not have been declined.

I have heard learned counsel for the appellant and have gone through the paper book.

In the facts and circumstances of the present case and evidence available on record, I am unable to accept the contentions raised on behalf of appellant. As per case set up by the appellant/plaintiff in the plaint, he was handed over possession of the suit property with an oral understanding that he would be entitled to purchase the same on payment of Rs. 5 Lakhs as per his own convenience. The appellant/plaintiff failed to produce any independent evidence on record besides an oral deposition made by PW-2 Avtar Singh which solely does not appear to be sufficient to prove the case set up by him. Even the date, month or year of any such said alleged settlement was neither pleaded nor proved on record. In the absence thereof, the plea raised at the instance of respondent No.1/defendant No.1 of handing over possession in favour of appellant/plaintiff as a caretaker gains credence being more probable as against the case set up by the appellant/plaintiff. Thus, having proved to be in possession of the suit property being a caretaker under the original owner, the appellant/plaintiff cannot be said to be entitled for grant of permanent injunction so as to protect his possession over the suit property being under an obligation to surrender possession in favour of its true owner on demand. For the said purpose I even derive support from the judgment passed by the Hon'ble Supreme Court in case titled as **Maria Margarida Sequeria Fernandes and others Vs. Erasmo Jack de Sequeria (Dead) through LRs. and Others, 2012(5) SCC 370**. Paragraph 101 of the aforesaid judgment is reproduced hereinunder:

“101. Principles of law which emerge in this case are crystallized as under:-

1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years

or decades such person would not acquire any right or interest in the said property.

2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

4. The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.

5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.”

As per the discussion made herein above, I do not find any merit in the present appeal, warranting any interference with the concurrent findings of the facts recorded by both the Courts below while dismissing the suit filed by the appellant and as such, the present appeal is ordered to be dismissed with no order as to costs.

Pending application(s), if any, shall also stand disposed of.

(HARKESH MANUJA)
JUDGE

05.12.2022
anil

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