

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

RSA-3960-2000(O&M)

Date of decision:-21.3.2023

Nirmal Singh

...Appellant

Versus

Kehar Singh

...Respondent

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

Present: Mr.G.S. Punia, Sr.Advocate with
Ms.Harveen Kaur, Advocate
for the appellant.

None for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Kehar Singh son of Mal Singh, resident of village Pakhowal, Tehsil Raikot, District Ludhiana had brought a suit against defendant Nirmal Singh son of Gajjan Singh son of Thaman Singh, a resident of that very village, seeking possession of 3 kanals 0 marla of land situated at village Pakhowal, fully detailed in head-note of the plaint.

2. According to the plaintiff the suit land along with some other land is recorded as ownership of Shamlat Patti Manak Hasab

Ramana Haqiat Pamana, Haqiat and partly Shamlat Thula Rupa Mal Singh son of Pattu was in possession of land measuring 3 kanals 0 marla being 1/2 share of the land measuring 6 kanals 0 marla; Mal Singh died and was succeeded by three sons i.e. Jagir Singh, Mehar Singh and Kehar Singh (plaintiff); all the three sons came in possession of the land, which was earlier being possessed by their deceased father Mal Singh; the plaintiff and his other two brothers divided the land and plaintiff got his 1 kanal in middle east of the land; Jagir Singh got 1 kanal in the middle west and Mehar Singh got his 1 kanal between the chunk of plaintiff and Jagir Singh, in that way the plaintiff was in possession of the suit property, however after rabi harvest of 1996, defendant Nirmal Singh without any right illegally and forcibly entered into the suit land belonging to the plaintiff; the plaintiff asked the defendant several times to deliver vacant possession of the suit land to him but to no effect. As such, he brought the suit in question.

3. On getting notice, the defendant appeared and filed written statement contesting the suit raising various legal objections, on merits contending that on 22.5.1986, the plaintiff had delivered peaceful possession of the land in suit after receiving consideration amount of Rs.5,500/-; he had executed an undertaking in favour of the defendant with all terms and conditions; subsequently on 18.10.1994, the plaintiff received another sum of Rs.25,000/- from

the defendant and undertook not to demand possession of the suit land from the defendant; the terms and conditions were reduced into writing, which was attested by the witnesses; the plaintiff had transferred all the rights with respect to the suit land in favour of the defendant. The defendant denied that he had illegally occupied the suit land after rabi harvest of 1996. The defendant claimed that he has got every right to retain the possession and plaintiff has no locus standi to file a suit. The defendant claimed that he had harvested the kharif crop and has sown rabi crop in the suit land. Refuting the remaining allegations, the defendant prayed for dismissal of the suit.

4. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

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

1. Whether the plaintiff is entitled to the possession of the suit land as prayed for? OPP.
2. Whether this Court has no jurisdiction to try this suit? OPD.
3. Whether the suit is not maintainable in the present form? OPD.
4. Whether the plaintiff is estopped by his acts and conduct from filing the present suit? OPD.
5. Whether the suit is not properly valued for the purposes of Court fee and jurisdiction? OPD

6. Relief.

Two additional issues were framed vide order dated 23.4.1997, which are as under:

5A Whether the plaintiff delivered possession of the suit land to the defendant after receiving consideration of Rs.5,500/- on 22.5.1996 and executed the alleged undertaking? OPD.

5B Whether the plaintiff received consideration of Rs.25,000/- on 18.10.1994 and undertake never to demand possession of the suit land vide the alleged writing? OPD.

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

7. After hearing the learned counsel for the parties, the trial Court of Civil Judge (Jr.Divn.) Jagraon decided issue No.1, 5A and 5B in favour of the defendant, issue No.2 was decided against the defendant, issues No.3 and 4 were decided against the plaintiff, issue No.5 was decided against the defendant and as a result of findings on issues vide judgment and decree dated 16.2.2000, the suit of the plaintiff was dismissed.

8. The plaintiff was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, Ludhiana, which was assigned to Additional District Judge, Ludhiana, who vide judgment and decree dated 7.9.2000 accepted

the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff for possession of the suit property.

9. Now it was turn of the defendant to feel dissatisfied and he had filed the present regular second appeal before this Court, notice of which was issued to the respondent/plaintiff, who had initially put in appearance through counsel but subsequently absented.

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

11. In this case a perusal of the revenue record in the form of jamabandi for the year 1997-98 Ex.D3. goes to show that in the ownership column, the entry is 'Shamlat Patti Manak Hasab Pamana Haqiat Shamlat Thula Rupa', whereas in the possession column the entry is Inderjit Singh and Beant Singh sons, Balwinder Kaur wife of Nachhattar Singh son of Ujagar Singh as well as Nachhattar Singh son of Ujagar Singh, Nirmal Singh son of Gajjan Singh son of Thamman Singh. In this case the plaintiff has tried to conceal material facts from the Court submitting that he had been in possession of 1 kanal of land but defendant Nirmal Singh has wrongly taken the possession thereof. Whereas the consistent case of defendant is that plaintiff himself had parted with possession of the suit land in his favour for consideration inasmuch as receiving

Rs.5,500/- on 22.5.1986 and Rs.25,000/- on 18.10.1994 executing writings in that regard. The trial Court had framed specific issues No.5A and 5B in that respect. The trial Court on analysis of the evidence brought on record by the parties including testimony of DW1 Harnek Singh and DW2 Somnath, attesting witnesses of the writing dated 22.5.1986 Ex.D1, the other writing being Ex.D2 has dealt with aspect of non registration of these documents as required under Section 17 of the Indian Registration Act coming to the conclusion that for want of registration, those documents cannot be relied upon but can be looked into for ancillary purpose to see the nature of possession. The plaintiff could not lead convincing evidence to show that defendant has illegally occupied the suit land. There is nothing on record to show that the plaintiff had lodged any complaint with the police or with village Gram Panchayat in that regard. Normally, if the defendant had done so, the plaintiff would have definitely initiated civil and criminal action but that has not been done.

12. While deciding a case of civil nature, the principle applied is preponderance of probabilities. The preponderance of probabilities is much more in favour of the case of the defendant than that of the plaintiff. Although the defendant has relied upon documents Ex.D1 and Ex.D2 said to have been executed by the plaintiff in favour of the defendant and plaintiff had denied their

execution but till date he has not initiated any action against the defendant for indulging in alleged forgery and fabrication of those documents. This being the state of affairs the execution of Ex.D1 and Ex.D2 by plaintiff in favour of the defendant on receipt of consideration amount stands established, which goes to show that the plaintiff had delivered the possession of the suit land to defendant voluntarily for consideration. It being so, now he cannot make a turn around and start claiming possession rather he is estopped from doing so by his act and conduct.

13. The trial Court was fully justified in dismissing the suit filed by the plaintiff. However, learned Additional District Judge, Ludhiana by misappraisal of the evidence and wrong interpretation of law had decreed the suit giving reasons that since Ex.D1 and Ex.D2 were not admissible in evidence for want of registration, therefore, the plaintiff could not sell the suit land to the defendant as he himself was not the owner of the same. Learned Additional District Judge, Ludhiana in the process forgot that the title might not have been transferred for the reason that plaintiff himself had no ownership right in the suit land but with regard to possession, he had handed over the same to defendant vide documents Ex.D1 and Ex.D2 for consideration.

14. Now the plaintiff cannot seek the possession back denying execution of Ex.D1 and Ex.D2 and levelling allegations that

the defendant has illegally and forcibly occupied the suit land. Any other person having a better title in the suit land may seek possession of the suit land from the defendant but the plaintiff is certainly estopped from doing so. Learned Additional District Judge, Ludhiana clearly fell in error in accepting the appeal and in the process setting aside the judgment and decree passed by the trial Court and the judgment by Additional District Judge, Ludhiana cannot stand judicial scrutiny, the same is set aside, whereas judgment and decree passed by the trial Court dismissing the suit filed by the plaintiff are restored with the observations that any person having title to the suit land or for that matter who is not a party to the suit shall not be bound by judgment and decree passed by the trial Court affirmed by this Court.

15. The appeal stands allowed accordingly with costs.

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

21.3.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No