

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

RSA-272-2003(O&M)

Date of decision:-25.1.2023

Naurang

...Appellant

Versus

Narain Diya

...Respondents

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

Present: Mr.Roopak Bansal, Advocate
for the appellant.

Mr.S.R. Hooda, Advocate
for respondent No.2.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Naurang had brought a suit against Narain Diya and Gram Panchayat of village Machraula, Tehsil & District Sonapat seeking a decree for permanent injunction restraining the defendants from interfering in his peaceful possession over the plot/house in question and dispossessing him therefrom illegally and forcibly.

2. As per the version of the plaintiff, the State Government had gifted the plot in dispute to the plaintiff under the 20 Point Programme executing a registered gift deed in his favour on 3.3.1994; the plaintiff had enclosed that plot with a boundary wall after doing the earth work and had

constructed a room for residential purpose there placing khuntas, a chaff cutter, fuel woods and cow dung cakes there and he has been using the plot in dispute for tethering cattle as well as for his residential purpose; although the defendants have no right or concern with this property but even then defendant No.1 at the instance of defendant No.2 threatened to dispossess the plaintiff therefrom illegally and forcibly, as such the plaintiff brought the suit in question.

3. On getting notice, the defendants appeared and filed separate written statements contesting the suit. In the written statement filed by defendant No.1, he had raised various legal objections contending that plaintiff has no locus standi to file the suit; the suit is not maintainable; no cause of action arose to the plaintiff to file the suit; the suit is not properly valued for the purpose of Court fee etc. On merits, the answering defendant denied that the plaintiff is owner or in possession of the plot in dispute, rather claimed that such defendant is the owner and in actual physical possession of the plot in dispute for more than 12 years with which the plaintiff has no concern. The defendant claimed that he had constructed the boundary wall and filled up the earth in the plot in dispute by spending Rs.2,000/- and has planted the trees therein, in that way, he is using the suit property for all practical purposes; this plot was wrongly allotted to the plaintiff vide gift deed dated 5779 dated 3.3.1994 because he was not eligible for the same; the answering defendant had filed a complaint in that regard to Deputy Commissioner, Sonapat, who held an inquiry and found the plaintiff ineligible for allotment of the plot, therefore the gift deed was cancelled vide order dated 13.6.1994; along

with the plaintiff several other persons like Surja and Ram Diya were also found ineligible for the allotment and their allotment was cancelled; vide letter No.3029 dated 26.4.1994, the gift deed bearing No.2863 dated 27.6.1994 was executed in favour of the answering defendant and mutation No.494 has also been sanctioned in his favour; the plaintiff has no right or concern with the property in question and he has filed a wrong suit in that regard, which calls for dismissal.

A separate written statement was filed on behalf of defendant No.2 Gram Panchayat which is almost on the similar lines as that of defendant No.1. It also prayed for dismissal of the suit.

4. The plaintiff had filed replication controverting the allegations in the written statements whereas reiterating the averments in the plaint. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is owner in possession of the suit property?
OPP.
2. Whether the jurisdiction of the Civil Court is barred u/s 13 of PVCL Act? OPD.
3. Whether the suit is barred by principle of res-judicata? OPD.
4. Whether the plaintiff has no locus-standi to file the present suit?
OPD.
5. Relief.

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

6. During the course of his evidence, the plaintiff examined Sardar Singh as PW1 and got his own statement recorded as PW2.

On the other hand, defendant No.1 got his own statement

recorded as DW1 and the defendants had further examined Dalip as DW2.

It may be mentioned here that defendant No.2 had been proceeded against ex-parte during the proceedings of the case.

7. After hearing learned counsel for the parties, the trial Court decided issue No.1 against the plaintiff, issues No.2 and 3 were decided against the defendants, issue No.4 was decided in favour of the defendants. Resultantly, suit of the plaintiff was dismissed with costs. This was so done vide judgment and decree dated 12.4.2002.

8. Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Sonapat, which was assigned to Additional District Judge, Sonapat, who vide judgment and decree dated 24.12.2002 dismissed the same.

9. Still feeling dissatisfied, the plaintiff has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and his suit be decreed.

10. Notice of the appeal was issued to the respondents/defendants. However, only respondent No.2 put in appearance through counsel.

11. I have heard learned counsel for the parties besides going through the record and I find that the appeal is absolutely without merit.

12. Permanent injunction dealt with by Section 38 of the Specific Relief Act,1963 is a discretionary equitable relief, which is to be granted by the Court keeping in view the facts and circumstances of the case including the conduct of the parties and no person can claim this relief as

a matter of right. For laying basis for grant of permanent injunction, a person approaching the Court must do so with clean hands disclosing all the material facts and if he tries to conceal any material fact from the Court, then such relief is not to be granted. Clause (i) of Section 41 of the Specific Relief Act provides that an injunction cannot be granted when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court.

13. Here in the present case, although the plaintiff claims that the gift deed in his favour had been executed but he is silent with regard to the same having been cancelled on a complaint submitted by defendant No.1 against him that he was not eligible for allotment of the plot and then the plot had been allotted to defendant No.1. All these facts are quite material but the plaintiff opted to keep silence in that regard and on that score alone the suit deserved dismissal.

The plaintiff has filed a suit for grant of permanent injunction simpliciter without seeking a declaration that the cancellation of the gift deed in his favour and thereafter the execution of gift deed in favour of defendant No.1 are wrong. The plaintiff has straight away filed a suit for permanent injunction claiming that he is in possession of the property in dispute when as a matter of fact he has failed to prove such assertion by producing cogent and convincing evidence. Rather it comes out that the stand taken by the defendants is correct and defendant No.1 is in possession of the plot in question at the spot on strength of the gift deed pleaded by him in the written statement. Therefore the suit of the plaintiff was rightly dismissed by the trial Court vide the impugned judgment and

decree dated 12.4.2002, which were affirmed by the First Appellate Court vide the impugned judgment and decree dated 24.12.2002.

14. Although learned counsel for the appellant has contended that Deputy Commissioner was not authorized to cancel the gift deed in favour of the plaintiff but the fact remains that the plaintiff has not challenged any such action by the Deputy Commissioner seeking a declaration in that regard and straightway filed the suit for grant of permanent injunction. As per the settled law, he cannot seek a declaration in garb of injunction. Therefore, this plea of the counsel for the appellant cannot be considered.

15. I conclude that the findings given by the Courts below are based upon proper appreciation and correct interpretation of law. Both the Courts had rejected the claim of the plaintiffs. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees. Those judgments and decrees are upheld.

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

17. The appeal stands dismissed with costs accordingly.

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

25.1.2023
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**