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

**RSA-1094-2022 (O&M)
Reserved on : 07.12.2022
Date of decision : 04.01.2023**

Ravinder Bhushan

.....Appellant

Versus

Rajesh and Another

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Ritu Pathak, Advocate for the appellant.

ALKA SARIN, J.

The present regular second appeal has been preferred by the plaintiff-appellant against the concurrent findings of fact returned by both the Courts below and dismissing his suit for permanent injunction.

The plaintiff-appellant sought a decree of permanent injunction restraining the defendant-respondents from dispossessing/interfering in the peaceful possession and construction of the plaintiff-appellant over the suit property as shown in site plan and detailed in para no.4 of the plaint in any way of manner. The defendant-respondent Nos.1 and 2 are the brother and father, respectively, of the plaintiff-appellant. It was pleaded that the defendant-respondent No.2 was the Mahant of Mandir Sita Mai at village Sita Mai, Tehsil Nigdhu, District Karnal and he was given a place of residence by the inhabitants of the village in the Mandir and in 1986 the

defendant-respondent No.2 had given portions to his sons for residence purposes. The plaintiff-appellant was given the portion of the house and bara on which the plaintiff-appellant had raised construction from his own pocket and the defendant-respondent No.1 was given the portion adjoining to the house of the plaintiff-appellant. It was averred that the plaintiff-appellant along with his children and wife was residing in the house and that he was having Aadhaar Card and other identity proof etc. of the said house and was also paying the water/sewerage bill regarding the said house. It was pleaded that the defendant-respondent No.2 had under the influence and on the asking of the defendant-respondent No.1 disowned the plaintiff-appellant from his moveable and immovable properties and had also filed a petition under Section 5 of the Senior Citizen Act against the plaintiff-appellant and others and now the defendant-respondents want to dispossess the plaintiff-appellant from the suit property illegally and forcibly.

The defendant-respondents contested the suit and filed written statement denying that the plaintiff-appellant was owner of the suit property. It was denied that the plaintiff-appellant was in possession of the bara or was raising any construction on it.

Based on the pleadings of the parties the Trial Court framed the following issues :

1. Whether the plaintiff is entitled for the relief of permanent injunction, as prayed for ? OPP
2. Whether the present suit is not maintainable ? OPD
3. Relief.

On the basis of the pleadings of the parties and the evidence produced, vide judgement and decree dated 18.09.2019 the Trial Court

dismissed the suit of the plaintiff-appellant holding inter-alia that the plaintiff-appellant had admitted that he had no proof in his possession to prove the ownership of his father (defendant-respondent No.2) and that the Mandir Sita Mai was the actual owner of the suit property. Aggrieved by the judgment and decree passed by the Trial Court, an appeal was preferred by the plaintiff-appellant and the same was also dismissed vide impugned judgment and decree dated 17.02.2022. Hence, the present regular second appeal by the plaintiff-appellant.

Learned counsel for the plaintiff-appellant has contended that the Courts below have mis-construed the evidence on the record and have illegally dismissed the suit. According to counsel, it was proven that the plaintiff-appellant was in possession of the suit property and therefore the suit of the plaintiff-appellant ought to have been decreed.

Heard.

In the present case the plaintiff-appellant while appearing as PW1 admitted that the suit property belongs to Mandir Sita Mai which was given to his father (defendant-respondent No.2) in the year 1986. However, there is nothing forthcoming to show that the actual owner had ever authorized the father of the plaintiff-appellant to give portions of the suit property to his two sons. Moreover, despite knowing that the actual owner of the suit property was Mandir Sita Mai the plaintiff-appellant did not deem it appropriate to implead the said actual owner as a party in the suit. The parties to the suit are father and sons and it seems that the suit was filed with an oblique motive of establishing their possession over the suit property behind the back of the actual owner i.e. Mandir Sita Mai. Further, the lower Appellate Court also found that the identity of the suit property had not been

established.

No other argument has been raised by learned counsel for the plaintiff-appellant. No question of law, much less any substantial question of law, arises for determination in the present case.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

04.01.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO