

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

119

RSA- 3841 - 2019

Decided on : September 25, 2023

Mohinder Singh

..... Appellant

Versus

Krishan Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Umesh Kumar Kanwar, Advocate
for the appellant.

NAMIT KUMAR, J. (Oral)

1. This regular second appeal emanates from the judgment and decree dated 30.05.2017 passed by Additional Civil Judge (Senior Division), Fazilka, whereby suit for permanent injunction filed by the plaintiff-appellant has been dismissed as well as against the judgment and decree dated 05.02.2019 passed by the District Judge, Fazilka, whereby appeal filed by the plaintiff-appellant against the judgment and decree dated 30.05.2017, has also been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The facts relevant for disposal of this regular second appeal are that plaintiff – Mohinder Singh on 08.12.2016, instituted a suit for Permanent Injunction against defendant - Krishan Singh restraining him from interfering in his peaceful possession over land measuring 20 kanals 12 marlas comprised in Rect. no. 44 killa no. 6 (8-0) 15/1 (3-0) 4/2/2 (2- 8) 5/1 (3-4) 7/1 (4-0) khewat no. 86, 87 khatoni no. 131, 132 as per jamabandi for the year 2014-15 situated in the revenue estate of village Ganjuana Hadbast No. 296 Tehsil and

District Fazilka, on the averments that defendant – Krishan Singh is a stranger and has no concern with the suit land, but due to political influence, he is interfering in his peaceful possession. Hence, the suit.

3. Upon issuance of notice, defendant appeared through counsel and filed the written statement controverting all the averments made in the plaint by taking number of preliminary objections regarding no cause of action; maintainability of suit; gross concealment of facts; estoppel and suit being false, while on merits, it was admitted that as per revenue record, plaintiff is joint owner in possession along with his brother - Milkha Singh, but plaintiff and his brother Milkha Singh agreed to sell 09 kanals 12 marlas of the suit land along with 1/3rd share in the electric tubewell motor connection @ Rs.24,50,000/- per acre and consequently, an agreement to sell dated 23.11.2015 was scribed, where-under Rs. 15,00,000/- was paid to them as earnest money. At that time, the vendors delivered actual physical possession of the land comprised in Rect. no. 44 killa no. 6 min (2-12) 15/1 (3-0) 5/1 min (1-0) 7/1 min (3-0) forming part of suit land in favour of plaintiff. The date for registration of sale deed was stipulated as 15.11.2016. Since then answering defendant is in peaceful cultivating possession over the suit land. He also moved an application seeking correction of khasra girdawri which is pending in the Court of Tehsildar-cum-AC 2nd Grade, Fazilka, but the plaintiff under the garb of the present suit wants to repossess the suit land and it was prayed that suit filed by the plaintiff may be dismissed.

4. Replication was filed by the plaintiff wherein he controverted the averments made in the written statement and reiterated those of the plaint.

5. From the pleadings of the parties, the learned trial court framed the following issues :-

(1) Whether plaintiff is entitled to the permanent injunction as prayed

for? OPP.

(2) Whether the suit is not maintainable in the present form? OPD.

(3) Whether the plaintiff has got no cause of action or locus standi to file the present suit ?OPD.

(4) Whether the plaintiff has concealed the material and patent facts from the Court? OPD.

(5) Relief.

6. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record dismissed the suit filed by the plaintiff with costs being devoid of merits.

7. Feeling aggrieved against the said judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 05.02.2019.

8. Learned counsel for the appellant contended that the judgments and decrees passed by both the Courts below are against law and the evidence on record. He further contended that both the Courts below have failed to appreciate that plaintiff was never paid the complete earnest money of Rs.15,00,000/- as agreed in the agreement to sell dated 23.01.2015, as only an amount of Rs.8,85,000/- was advanced to him whereas the remaining amount of Rs.6,15,000/- was never paid by the defendant, therefore, the agreement to sell in question is not a valid piece of document in the eyes of law. He further submits that both the Courts below by mis-appreciating the agreement to sell in question have dismissed the claim of the plaintiff.

10. I have heard learned counsel for the appellant and perused the record.

11. Plaintiff filed a suit seeking Permanent Injunction against defendant - Krishan Singh restraining him from interfering in his peaceful possession over

suit property.

12. Concurrent findings have been recorded by both the Courts below that there is concealment of facts on the part of plaintiff and he has not approached the courts with clean hands. Moreover, the plaintiff – Mohinder Singh, neither in his pleadings nor in his statement on oath before the trial court, admitted the *factum* of entering into a agreement to sell of 09 kanals 12 marlas of the suit land with the defendant, but in the grounds of appeal preferred before the District Judge, Fazilka and even in the instant Regular Second Appeal, not only this new *factum* has been admitted, but a new concocted story, which is completely beyond pleadings, has been introduced by mentioning that at the time of entering into sale agreement on 23.01.2015, out of the earnest money of Rs. 15.0 lac mentioned therein, only Rs. 5.0 lac was paid in cash by the defendant while a sum of Rs. 2,85,000/- was adjusted being compromise amount of an appeal matter titled '*Milkha Singh versus Makhan Singh*' which was compromised on 26.11.2015 in Lok Adalat and a sum of Rs. 1.0 lac more was received in cash (and thus total of Rs. 8,85,000/- travelled from the defendant to the plaintiff in the said agreement) leaving a balance of Rs. 6,15,000/- which has not been paid till date. Thus is is crystal clear that contrary to the pleadings and evidence led thereupon, the plaintiff is taking different stands at different forums and as such, both the courts below have rightly refused to rely upon his testimonies by arriving at that his claim was based upon gross concealment of facts. Thus, learned counsel for the appellant has failed to show that the findings recorded by Courts below are perverse or illegal or based on misreading, nonreading or mis-appreciation of the material evidence on record.

13. In view of above, no question of law, muchless substantial arises for consideration in the present appeal. No other point has been urged.
14. Dismissed.

September 25, 2023
mkkoundal

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No

(NAMIT KUMAR)
JUDGE