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

RSA-3789-2019

Date of decision: 18.12.2023

Amar Nath

...Appellant

Versus

Mahant Sukhdev Dass and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Rohit Sapehiya, Advocate for the appellant.

KARAMJIT SINGH, J. (ORAL)

1. This appeal has been filed by appellant/plaintiff against the judgment and decree dated 23.03.2015 passed by the Court of Civil Judge (Junior Division), Mukerian (Hoshiarpur) whereby the suit filed by the appellant for grant of decree for declaration to the effect that appellant has become owner in possession of the suit land with consequential relief restraining the respondents from interfering into peaceful possession of the appellant over the suit property, was dismissed and judgment and decree dated 15.02.2019 passed by the Court of Additional District Judge, Hoshiarpur whereby the appeal filed by the appellant against judgment and decree dated 23.03.2015, has been dismissed.

2. The brief facts of the case of appellant-plaintiff are that appellant came into possession of the suit property vide writing/ *patanama* dated 04.10.1986 whereby the entire consideration money @ Rs.10,000/- per *marla* was paid to respondent No.1 *Mahant* Sukhdev Dass and his brother Shiv Kumar Dass in presence of the marginal witnesses. That the appellant

is in continuous possession of the suit property since the date of execution of aforesaid writing whereby the proprietary rights in the suit property were transferred in favour of the appellant by the aforesaid vendors. However, prior to filing of the suit the respondents threatened to dispossess the appellant and they also claimed their ownership over the suit property. Hence the suit for declaration and permanent injunction was filed.

3. The suit was contested by respondents who filed written statement wherein it was pleaded that the appellant is neither owner nor in possession of the suit property. Even the execution and validity of alleged writing dated 04.10.1986 was denied. The other averments of the plaint were also denied and it was pleaded that the suit be dismissed.

4. On the basis of the pleadings of both the parties, following issues were framed by the trial Court:-

- 1. Whether the plaintiff is entitled for declaration as prayed ?OPP*
- 2. Whether the plaintiff is entitled for consequential relief of permanent injunction as prayed for?OPP*
- 3. Whether the suit of the plaintiff is barred under order 2 rule 2 CPC? OPD*
- 4. Whether the plaintiff is not the owner of the suit land?OPD*
- 5. Whether the suit of the plaintiff is not maintainable?OPD*
- 6. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 7. Whether the site plan of the plaintiff is incorrect?OPD*
- 8. Whether the suit of the of the plaintiff is bad for misjoinder of defendant and Mohinder Chand?OPD*
- 9. Whether the application is without any cause of action?OPD*
- 10.Relief.*

5. In order to prove his case, appellant himself appeared in the witness box as PW4 and also examined PW1 Himmat Singh, PW2 Amar Singh and PW3 Manjit Singh, Draftsman and further tendered writing Ex.P1 dated 04.10.1986, site plans Ex.P2 and Ex.P3, *jamabandi* for the year 2005-06 Ex.P4, *khasra girdwari* from 2006 to 2009 Ex.P5 and photographs Mark-

A to C and Mark X-1 to X-3.

6. On the other hand, respondent No.1 appeared in the witness box as DW1 and respondents also examined, DW.2 Pachanan Dass, DW3 Prem Nath and also produced number of documents i.e. copies of complaints relating to previous litigation, copy of legal notice, affidavit of Himmat Singh, orders dated 22.07.2000, 23.10.2008, 18.04.2009, 20.01.2009, 18.07.2009, 14.11.2009 and 19.01.2010.

7. The learned trial Court after going through the entire evidence decided issues No. 1 and 2 against the appellant while holding that appellant has failed to prove his ownership and possession over the suit property and consequently the suit was dismissed.

8. Even the appeal filed by the appellant against the judgment of learned trial Court was also dismissed by the Court of Additional District Judge, Hoshiarpur while affirming the findings recorded by the learned trial Court. The appellate Court further observed that the suit filed by appellant in year 2010 seeking declaration of ownership on the basis of writing dated 04.10.1986 is hopelessly time barred.

9. Being dissatisfied, the appellant has filed the present appeal.

10. I have heard the counsel for the appellant.

11. During arguments, when confronted, the counsel for the appellant admitted that writing in question is not bearing any date. The counsel for the appellant further conceded that appellant has failed to prove his ownership over the suit property. However, it is contended that the appellant is in possession of the suit property since 1986 and he being in settled possession cannot be dispossessed except in due course of law. So

prayer is made that the appellant be granted decree of permanent injunction restraining the respondents from interfering into peaceful possession of the appellant over the suit property.

12. I have considered the submissions made by counsel for the appellant.

13. From the perusal of the judgments passed by the Courts below, it is evident that the trial Court as well as first appellate Court after making proper appreciation of the evidence, rightly held that appellant failed to prove his ownership over the suit property. This fact was also conceded by the counsel for appellant during the arguments.

14. During arguments, the counsel for the appellant has not disputed the ownership of respondent No.1 and his brother Shiv Kumar Dass with regard to suit property. Further, the trial Court observed that appellant/plaintiff has failed to prove on record any document showing his possession over the suit property. Even the appellate Court also reiterated the said finding while observing that plaintiff was not shown anywhere in revenue record Ex.P-4 and Ex.P-5. During arguments, the counsel for the appellant has failed to bring to the notice of this Court any such document with regard to possession of the appellant over the suit property. From the evidence discussed above, it could be easily made out that the appellant did not approach the Court with clean hands. Further the agreement in question was executed on 04.10.1986 whereas the suit was filed on 23.02.2010 without any explanation with regard to delay in filing of the suit. So, the first appellate Court correctly held that the suit was hopelessly time barred.

Furthermore, it is established law that no injunction can be granted against

true owner and in favour of the person who is in unlawful possession of the property.

15. In light of the above, the appellant has failed to show that the findings of the fact recorded by both the Courts below are suffering from any illegality or perversity. Further no question of law, muchless any substantial question of law arises in the present appeal. Both the Courts below have recorded concurrent findings of facts warranting no interference by this Court.

16. Accordingly, the present appeal is hereby dismissed in limine, being devoid of merits. Pending applications, if any, also stand disposed of.

18.12.2023

Yogesh

**(KARAMJIT SINGH)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**