

2023:PHHC:166456



124.

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

RSA No.1697 of 2023 (O&M)

Date of decision: 19.07.2023

Hardial Singh

... Appellant

Versus

The Railway Mazdoor Co-operative House Building Society Limited
(Registered), Adarsh Nagar, Khuh Anoop Singh, Ferozepur City, and
others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Sanjeev Kumar Arora, Advocate, for the appellant.

GURBIR SINGH, J.

The present regular second appeal has been filed against the judgment and decree dated 01.04.2023 passed by learned Additional District Judge, Ferozepur, whereby two separate appeals filed by the appellant-Hardial Singh and one Pipal Singh, through his legal representatives, were dismissed against the common judgment and decree dated 20.12.2018 passed by the learned Additional Civil Judge (Senior Division), Ferozepur, whereby suit filed by the appellant Hardial Singh and one Pipal Singh against the Railway Mazdoor Co-operative House Building Society Limited, and others, was dismissed, whereas the suit filed by the Railway Mazdoor Co-operative House Building Society Limited, against the appellant-Hardial Singh and others, was decreed.

Brief facts necessary for the disposal of this appeal are that Hardial Singh and Pipal Singh (since deceased, through his legal representatives) filed a Civil Suit No.753-1, CIS No.CS/66593 of 2013 (hereinafter called, “plaintiffs”) against the Railway Mazdoor Cooperative House Building Society Limited, and others (hereinafter called, “defendants”) for permanent injunction restraining the defendants from interfering in the possession of the plaintiffs over the plot measuring 9 marlas each comprised in khasra No.136, killa No.23/2, with boundaries i.e. East: Rasta, West: Pipal Singh, North: Rasta, South: Rasta, owned by plaintiff No.1, and second plot measuring 9 marlas, as shown in red colour in the site plan with boundaries i.e. East: Hardial Singh, West: Baldev Singh Aulakh, North: passage, South: passage, both situated at Khuh Anoop Singh, Adarsh Nagar, Ferozepur City, and further restraining the defendants from interfering in the construction of the plaintiffs over the plot in question.

The Railway Mazdoor Cooperative House Building Society Limited filed a suit bearing No.262, CIS No.CS/69049/2013 against Hardial Singh, Surjan Singh and Pipal Singh (since deceased, through his legal representatives), for permanent injunction restraining the defendants from interfering in any manner or dispossessing the plaintiffs from its established possession as owner of land comprised in Rect. No.136, killa No.13/2(4-0), 14/2(0-8) as per jamabandi for the year 2003-04, as depicted in the copy of Shajra aks, situated in Adarsh Nagar,

Khuh Anoop Singh, within the revenue estate of Ferozepur City, and directing the defendants to remove the *malba* of illegal construction raised by them on the site in question during the pendency of the suit.

The learned trial Court decided both the suits earlier vide common judgment. The appellate Court allowed the appeal, remanded both the suits with a direction to the trial Court to club both the civil suits and both the cases be decided with one common judgment and further, direction was given to decide the objections filed in Civil Suit No.262 i.e. CS/69049/2013. The learned trial Court clubbed both the suits vide order dated 29.11.2018. The Civil Suit No.262 i.e. CS/69049/2013 titled as *The Railway Mazdoor Cooperative House Building Society Limited Versus Hardial Singh and others* (hereinafter called, 'second suit') was ordered to be clubbed with the other suit titled as *Hardial Singh and others Versus Railway Mazdoor Cooperative House Building Society Limited* (hereinafter called, 'first suit').

For convenience, Hardial Singh and Pipal Singh (since deceased, through his legal representatives) are hereby being called as "plaintiffs" and The Railway Mazdoor Cooperative House Building Society Limited (registered) and others, are hereby called as "defendants".

The plaintiffs Hardial Singh and Pipal Singh (since deceased, through his legal representatives) filed a suit (first suit) against the above said defendant Society and others, for permanent injunction on

the ground that they were owners in possession of the plots measuring 9 marla each comprised in the suit having purchased the same from Surjan Singh vide registered sale deeds dated 18.06.2009 and the defendant Society had no title or concern with the plots in dispute. The defendants filed written statement that the land owned and possessed by the defendant-Society was comprised in Rect. No.136, Killa No.13/2(4-0), 14/2(0-8). The plaintiffs had mentioned wrong boundaries of the plots in the site plan. The Society, after purchasing the land in question, prepared a site plan for construction of a residential colony and carved out residential plots and the same were allotted to the owners, who raised construction of their respective houses thereon. Surjan Singh, vendor of the plaintiffs, purchased 18 marlas land out of land comprised in Rect. No.136, Killa No.13, 23, 7 situated in Kirti Nagar, Ferozepur City, which adjoined Adarsh Nagar, from Partap Singh, vide sale deed dated 08.10.1990. Surjan Singh wrongly mentioned the boundaries of land of Rect. No.136, Killa No.23/2. The plaintiffs under the guise of sale deeds dated 18.06.2009, wanted to take illegal and forcible possession of land of Society comprised in Rect. No.136, Killa No.13/2(4-0), 14/2(0-8) which was left vacant by the defendant Society by carving out plots No.21 and 22 for the purpose of construction.

After framing of the issues, the parties led their evidence in the first suit.

In the second suit i.e. *The Railway Mazdoor Cooperative House Building Society Limited Versus Hardial Singh and others*, the said Society filed suit for permanent injunction restraining from interfering the possession of the Society with regard to land measuring 4 kanals 8 marlas bearing Rect. No.136, Killa No.13/2(4-0) and 14/2(0-8), and further with a direction to the appellants to remove the *malba* of illegal construction raised by them on the suit land, on the ground that Sher Singh etc. were the owners in possession of land measuring 33 kanals 13 marlas comprised of Rect. No.136, Killa No.12/4(3-1), 19/1(5-16), 22(8-0), 23/1(4-8), 13/2(4-0), 14/2(0-8), 18(8-0), situated within the revenue estate of Ferozepur as per jamabandi for the year 1978-79. After purchasing the land, the defendant Society prepared a site plan for construction of residential colony and carved out residential plots which were allotted to its owners, who raised construction of their respective houses in the said area. The case of the said Society further is that Surjan Singh son of Karnail Singh was the owner of 18 marlas that 18/72 share in 3 kanals 12 marlas of land comprised in Rect. No.136, Killa No.23/2(3-12) which adjoined the land purchased by the defendant Society. Said Surjan Singh sold 9 marlas each being 9/72 share out of land measuring 3 kanals 12 marlas comprised in Rect. No.136, Killa No.23/2(3-12) to the plaintiffs-Hardial and Pipal Singh. While executing sale deeds, Surjan Singh wrongly mentioned the boundaries of land of Rect. No.136, Killa No.23/2. The defendant Society had no concern with

the land of Hardial Singh etc. comprised in Rect. No.136, Killa No.23/2, but they intended to take forcible possession of the land of the Society under the garb of sale deeds dated 18.06.2009. Hardial Singh etc. contested the suit that they were in actual possession of Rect. No.136, Killa No.23/2(3-12) as owner and had raised construction thereupon after purchasing the same.

After framing of the issues, both the parties led their evidence in the second suit.

The learned trial Court, vide judgment and decree dated 20.12.2018, dismissed the first suit filed by the plaintiffs-Hardial Singh and others and decreed the second suit filed by the Railway Mazdoor Cooperative House Building Society Limited and decree for permanent injunction was passed in favour of defendant Society.

Aggrieved by the said judgment, two appeals were filed, which were dismissed by first appellate Court by common judgment dated 01.04.2023.

The plaintiff Hardial Singh has filed the instant appeal with a prayer for setting aside the judgments and decrees passed by the courts below and for dismissing the second suit filed by the Railway Mazdoor Cooperative House Building Society Limited.

Learned counsel for the appellant-plaintiff has argued that the only dispute between the parties is with regard to the identity and location of Rect. No.136, Killa No.23/2(0-18) out of 3 kanals 12 marlas

and identity and location of Rect. No.136, Killa No.13/2(4-0) and 14/2(0-8). The courts below erred in ignoring the registered sale deeds dated 18.06.2009 which have been duly proved on the file. The courts below gravely erred in observing that Surjan Singh was having title over land comprised in Rect. No.136 M, Killa No.7, 13 and 23 having purchased 18 marlas out of the same from Patrap Singh, but he transferred land measuring 18 marlas out of land comprised in Rect. No.136M, Killa No.23/2(3-12). In fact, ownership of Surjan Singh over land measuring 18 marlas comprised in Rect. No.136M, Killa No.23/2(3-12) has been admitted by the defendant Society. A fact which was admitted was not required to be proved. Hardial Singh and Pipal Singh got sanctioned the site plans of the respective plots from the Municipal Council, Ferozepur City and duly proved the said site plans by leading evidence. The SDM, Ferozepur, got conducted demarcation on the complaint of Tilak Raj, President of the defendant Society, and gave the report that the plaintiffs Hardial Singh and Pipal Singh had constructed four walls and installed a gate on the said land and also constructed one room there. He held that the demarcation report bearing No.1011, dated 22.06.2009, was correct and the site plans sanctioned by the Municipal Council in favour of plaintiffs Hardial Singh and Pipal Singh were also found to be correct. The said documents are public documents and the presumption of genuineness is attached with the said documents. The courts below wrongly did not place reliance on the said documents. Said

report was prepared in the presence of the parties, so the plaintiffs could not challenge the said report in this suit. The said report was made on the complaint moved by the defendant Society, so said report is binding on the defendant Society. The plots of the plaintiffs were admittedly adjacent to the property of the defendant Society which is in possession of 33 kanals 13 marlas. The property was originally in the nature of agriculture land owned by the ancestors of Partap Singh, vendor of Surjan Singh, and property was never partitioned, so the defendant Society cannot lay claim on the plots of the plaintiffs. The boundaries have been correctly mentioned by the plaintiffs. Mere mentioning of “Kirti Nagar” in the sale deed does not change the identity of the property which is also comprised in khasra numbers. The suit filed by the defendant Society deserves to be dismissed.

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

Admittedly, the plaintiffs Hardial Singh and Pipal Singh purchased property vide sale deeds dated 18.06.2009. They are claiming that the plots in killa No.23/2 are owned and possessed by them. On the other hand, the defendant Society is claiming that the disputed property is comprised in Killa No.13/2(4-0) and 14/2(0-8). The defendant Society purchased the land vide sale deed dated 24.09.1980 which shows that Khasra No.13/2 and 14/2 was purchased by the Society. The predecessor-in-interest of the plaintiffs, namely, Surjan Singh, purchased

the property from Partap Singh vide registered sale deed No.08.10.1990 with specific boundaries showing road only on the southern side. The boundaries as mentioned in the sale deed dated 08.10.1990 and the sale deed dated 18.06.2009 vide which Hardial Singh and Pipal Singh purchased the property, did not match. The courts below have rightly held that a person cannot sell the property which is different from the property purchased by him. The learned first appellate Court had discussed in detail in its judgment dated 01.04.2023 as under:-

19.whether the suit property is the ownership of appellants or the respondents and who is in possession of the same. Whereas on one side the appellants are claiming that the suit property falls within Rect. no. 136 Killa No. 23/2 and on the other hand the respondents are claiming that the property falls within Rect. No. 136 Killa No. 13/2 (4-0) and 14/2 (0-8). In that scenario the site plan produced by both the parties and the Aksh Shajara of the property in question becomes very important, wherein as per site plan Ex. P9 the Khasra No.13/2 and 13/4 are lying separate from Khasra No.23/2 and even the sale deed dated 24.09.1980, which was in favour of respondent i.e. Railway House Building Cooperative Society Ltd. Clearly shows that Khasra No. 13/2 and 14/2 was purchased by the respondent society and even the mutation was sanctioned. On the other hand, the appellants are claiming the ownership of the said suit property on the basis of the sale deed got registered by Surjan Singh in favour of the appellants being registered on 18.06.2009 and the perusal of the said sale deed shows that the khasra No. 23/2 was purchased by them and the boundaries are shown to be liked that on the Eastern side, there is a road, western side Pippal Singh, on northern and southern side, there is a street and the said land is near Adarsh Nagar and even sale deed dated 08.10.1990, vide which Surjan Singh has purchased the property from Partap Singh, wherein the boundaries are shown as on the eastern side Partap Singh, western side Lakhvir Singh, northern side Partap Singh and on southern side, there is a road. The counsel for the appellants failed to explain the said difference in the boundaries of the same property, which

was purchased by Surjan Singh from Partap Singh and then sold by Surjan Singh to Hardial Singh and Pippal Singh. Even in the sale deed in the name of Pippal Singh, the property is shown to have boundaries on the eastern side Hardial Singh, on the western side Baldev Singh Aulakh and a road is shown to be on the sides of north and south and this property is also shown to be near Adarsh Nagar. The document further shows that the entire society exists in the area namely Adarsh Nagar and the entire area of Adarsh Nagar consists of the building society enacted by The Railway Mazdoor Housing Building Society Ltd. So, if at all the entire property is situated within the area of Adarsh Nagar, which is the property of the respondents, whereas the khasra No. 23/2 is a separate property, which is evident from the recital made in the sale deeds, on the basis of which the property is stated to be purchased by the appellants. It is also there on the record that the khasra number 13/2 and 14/2, which were having plot No.21 and 22 in the society were left for the construction of the Community Hall and the appellants are trying to take the forcible possession of the same. Even the perusal of the evidence led by the parties shows that Surjan Singh while selling the property to Hardial Singh and Pippal Singh has sold the same with different boundaries. It is a fact to be noted that a person cannot sell a property which is different from the property purchased by him. Even if, the boundaries of this property, which is alleged to be existing in Killa No. 23/2 is concerned, if the same is correlated with Aksh Shajara Ex. P9, and even the demarcation report on the record and the other sale deeds will lead to an inference that some other land was sold to Hardial Singh and Pippal Singh, which is definitely out of Killa No. 23/2 but the appellants are claiming themselves to be having the property which is situated within Killa No. 13/2 and 14/2. The learned trial court has rightly discussed the entire evidence led by both the parties one by one and comes to a conclusion that the said sale deeds were of some other land than that land where the possession is being claimed by the appellants.

20. As far as the question of possession being claimed by both the parties is concerned, the pleadings of Hardial Singh and Pippal Singh were contradictory to each other, since in their earlier pleadings at the time of filing the suit, they had claimed that there was a existing room or boundary wall as claimed by Surjan Singh, but during the proceedings, they had pleaded by adding para No. 4(A) by

staying that they started raising the construction over the plot in question and they were stopped by way of interruption by respondents. However, they relied their claim on the site plans they got approved from the Municipal Council, Ferozepur and these sanctions were granted to the appellants, during the pendency of the suit on 26.02.2010 that means there lied a vacant plot at the spot and the appellants tried to raise the construction during the pendency of the suit. Even during the cross examination Hardial Singh and Surjan Singh failed to disclose the dimensions of their plot, which were exchanged between them by way of a sale deed. The dimensions and the boundaries shown in the Sale deeds are different from the actual and factual position, which is evident from the report of Kanungo, who was appointed as Local Commissioner by the court. Even the house of one Baldev Singh Aulakh which is shown to be existing in the sale deed registered in the name of the appellants and the fact that Adarsh Nagar, Kirti Nagar and Railway Mazdoor society are different societies then this fact goes a long way in showing that the appellants could not prove the existence of his plot in Railway Mazdoor House Building Society, whereas on the other hand, the sale deed produced on record by the respondents, clearly reflects the boundaries of the plot being sold to the other vendors. Whereas the evidence led by the Railway Mazdoor Society had clearly proved their case by bringing on record the sale deed vide which they had purchased the land in question, wherein Killa No. 13/2 and 14/2 are clearly being mentioned to be purchased by them and even their pleadings being tested on the touch stone of the documents produced on record by them and the Aksh Shajara clearly shows that Killa No. 23/2 wherein the property of the appellants is lying are two different entities and are situated at two different places of the land in question. Even the demarcation report dated 31.12.2011 clearly reflects that the said property lies somewhere else and even the site plan which is attached with the said demarcation report clearly reflects that Killa No. 18 lies in between Killa No. 13/2 and 14/2. So, a different killa number i.e. Killa No. 18 of Hadbast No. 136 lies in between the disputed killa numbers, so there was no question of property of appellants being situated within the respondent House Building Society.”

The report of SDM that site plans sanctioned are correct, is of no help to the plaintiffs. Since no demarcation report was obtained in the suit itself, so any demarcation report obtained in the complaint is of no consequence.

In the light of above discussion, this Court finds that both the courts below have recorded correct finding of fact based on evidence. There is no misreading of evidence nor mis-appreciation of evidence. No question of law much less substantial question of law is involved in the present case. The same is without any merit and is dismissed accordingly.

Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

July 19, 2023
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No