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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****RSA NO. 559 of 2022 (O&M)
DATE OF DECISION: 24.05.2023****Kashmir Singh****...Appellant****Versus****Gurjit Kaur and another****...Respondents****CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present: Mr. B. S. Jaswal, Advocate
For the appellant.

ARUN MONGA, J. (ORAL)

Having suffered adverse concurrent findings by the two Courts below, plaintiff/appellant herein is in second appeal against the judgment and decree dated 25.09.2018, as upheld by learned First Appellate Court vide its judgment and decree dated 05.03.2020, vide which suit for permanent injunction restraining the defendants from interfering into his peaceful possession over the land in dispute, was dismissed.

2. Briefly stated, facts as noticed by Courts below are that plaintiff-appellant's father Jarnail Singh was the original owner in possession of the property in question. He died on 17.03.2016. Plaintiff and his brother and sisters inherited said property. Baldev Singh brother of the plaintiff also died later. After death of Baldev Singh, defendant-Babbu contracted second marriage. Now plaintiff and his brother Gurmeet Singh are owners in possession of the suit property. Plaintiff also constructed one bathroom and toilet and installed motor in the suit

property and defendants have no right, title or interest in the same. Defendant No.1 is claiming suit property on the basis of forged and fabricated documents and threatened to interfere in their peaceful possession. Hence, the suit.

3. Upon notice, defendants appeared and filed written statement taking preliminary objections regarding maintainability; concealment of true facts; locus standi; misjoinder and non joinder of necessary parties; cause of action.

3.1. On merits, it was pleaded that Jarnail Singh was owner of suit property and he died on 17.03.2016. He was earlier married to Harbhajan Kaur. After death of Harbhajan Kaur, he performed marriage with defendant No.1 (Gurjit Kaur) and out of said wedlock two children, namely, Manpreet Kaur and Anshdeep Singh were born. Correct name of defendant No.2 is Parveen Kaur. She is the widow of Baldev Singh. Other averments contained in plaint were denied and prayer was made for dismissal of suit.

4. Replication was filed.

5. Based on rival pleadings, following issues were framed:

- “(1). Whether the plaintiff is entitled to relief of permanent injunction, as prayed for ? OPP*
- (2) Whether the suit of the plaintiff is not maintainable? OPD*
- (3) Whether the suit is bad for misjoinder and non-joinder of the necessary parties? OPD*
- (4) Whether the plaintiff has no locus standi to file the present suit? OPD*
- (5) Whether site plan attached with the plaint is wrong ? OPD*
- (6) Whether the plaintiff has not come to the Court with clean hands ? OPD*

(7) *Relief.*”

6. Parties to suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid.*

7. On appraisal of evidence vis-à-vis pleadings, issue No.1 was decided against the plaintiff and in favour of the defendants. Issues No.2 to 6 were taken up together and decided in favour of plaintiff and against the defendants. Consequently, suit of plaintiff was dismissed with costs vide trial Court’s judgment and decree dated 25.09.2018.

8. Feeling aggrieved, plaintiff went in appeal which was also dismissed by learned First Appellate Court vide impugned judgment and decree dated 05.03.2020, resulting in Regular Second Appeal by plaintiff before this Court.

9. I have heard learned counsel for appellant and perused the judgments of both the Courts below.

10. In its judgment, learned trial Court, *inter alia*, observed/held as below:

“xxx

PW1 Kanwaljit Kaur sister of plaintiff was cross-examined and she deposed that defendant no.2 is widow of her brother Baldev Singh but now defendant no.2 has remarried. It is pertinent to mention here that plaintiff failed to prove any document to the effect that defendant No.2 has remarried. PW1 Kanwaljit Kaur identified photo of his father Jarnail Singh on his ration card but denied to identify the lady shown with deceased Jarnail Singh in that ration card. Though PW2 Santokh Singh also asserted that defendant no.2 has remarried with some Baldev Singh but he further deposed during cross- examination that he does not know regarding residence or father name of alleged Baldev Singh

with whom defendant No.2 allegedly remarried according to case of plaintiff. Conduct of PW2 Santokh Singh become suspicious because one compromise mark DF was shown to him and he wanted to deny his signature on that compromise and in that attempt he also refused to identify his own signature on his affidavit Ex.PW2/A which he had tendered in his examination-in-chief. Though plaintiff asserted that site plan Ex.P1 has proved on record to show exclusive possession of plaintiff over disputed house but PW3 Baljinder Singh Chahal, Architect has deposed during cross-examination that dimensions and directions of Ex.P1 have mentioned as stated by Gurmit Singh. Further plaintiff Kashmir Singh identified photo of his father Jarnail Singh on voter slip Ex.P4 and also admitted that voter slips of his brother Gurmit Singh and his wife Manjit Kaur are Ex.P5 and Ex.P6 and same relates to house no.170. Now pleadings of defendants have substantiated through Ex.P7 because vote of defendant Gurjit Kaur was also registered in house No.170 as wife of deceased Jarnail Singh. Though plaintiff deposed that entry of name of defendant Gurjit Kaur as wife of Jarnail Singh is wrong in ration card but plaintiff failed to explain the facts that how vote as well as ration card of defendant no.2 Gurjit Kaur was registered as wife of deceased Jarnail Singh if she was not legally wedded wife of deceased Jarnail Singh. Witnesses examined by defendants have produced numerous documents prepared by bank, in which defendant Gurjit Kaur was nominated by deceased Jarnail Singh as his nominee. Admittedly suit property is situated within the lal lakeer of village Bagga and no document of ownership is available on record but ownership of deceased Jarnail Singh is admitted on the part of both parties to this suit. Documents Ex.D1 to Ex.D28 could not rebutted by plaintiff and Court has no hitch to say that voter card/ ration card etc were duly prepared by concerned departments and from these documents it is clear that defendants are residing in disputed property. Nothing is on record where from it can be said that suit property was ever partitioned between legal heirs of deceased Jarnail Singh and resultantly rights of defendants over disputed property cannot be discarded DW4 Gurjit Kaur specifically deposed that she has come from village Bagga and Kashmir Singh is residing in separate portion of the suit property. It is evident from pleadings of plaintiff as well as evidence available on

file that status of defendant Gurjit Kaur as wife of Jarnail Singh was intentionally concealed by plaintiff at the time of presentation of this suit. There is no explanation that how and why Jarnail Singh was alleged Gurjit Kaur as his wife in his ration card if Gurjit Kaur was not legally wedded wife of deceased Jarnail Singh though marriage certificate could not produce by defendant no.1 but other documents produced by defendants are enough to show that defendant Gurjit Kaur was openly treated by deceased Jarnail Singh as his wife. Mere production of site plan is not enough to show that plaintiff is in exclusive possession over disputed property. In view of above discussion, issue no.1 is decided against the plaintiff and in favour of defendants.

Xxx”

11. The sum and substance of the contentions in this second appeal is that the plaintiff had proved his possession over the suit property, which entitled him to the decree for permanent injunction as sought. Yet, the learned Courts below wrongly held that the plaintiff's possession over the suit property had not been proved and on that ground, he has been non-suited.

12. The said finding of the learned trial Court was upheld by the learned First Appellate Court by giving reasons thereof.

13. On perusal of impugned judgments, my considered opinion is that the contentions in this second appeal were also raised before the Courts below, were duly considered and repelled by them. In my opinion sound and sufficient reasons consistent with record and the applicable law, were recorded by the learned Courts below for rejecting the plaintiff's contentions with which I am inclined to agree. There seems no substance in the submissions that the impugned judgments are based on surmises and conjectures.

13.1. No new arguments have been raised other than reiteration of the stand taken before the Courts below.

14. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

15. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

16. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of the Civil Procedure Code.

17. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

18. Pending application/s, if any, shall also stand disposed of.

19. No order as to costs.

MAY 24, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No