

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4388 of 2019 (O&M)

Reserved on : 28.02.2023

Date of Decision : 14.03.2023

Madan Mohan Devgan

....Appellant

VERSUS

Ashwani Grover

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. G.S. Kaura, Advocate for the appellant.

ALKA SARIN, J.

CM-12301-C-2019

This is an application seeking condonation of delay of 574 days in filing the present appeal.

For the reasons stated in the application, the same is allowed.

The delay of 574 days in filing the present appeal is condoned.

RSA-4388-2019

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

The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for permanent injunction for restraining the defendant-respondent from interfering in his actual peaceful possession over the plot shown in red colour in the site plan attached with the plaint and described in detail in the plaint. The plaintiff-appellant averred that he was in possession of the plot in question on the basis of a registered sale deed and that the defendant-respondent was interfering in his possession. The defendant-respondent filed his reply and averred that the plaintiff-appellant was neither

the owner nor in possession of the suit property. The defendant-respondent set-up his ownership over the suit property.

On the basis of the pleadings, following issues were framed :

1. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP
2. Whether the defendant is owner in suit property without notice ? OPD
3. Whether the defendant is bonafide purchaser of suit property without notice ? OPD
4. Relief.

The Trial Court vide judgment and decree dated 08.04.2016 held that the defendant-respondent was a co-sharer in the suit property by way of sale deed dated 02.07.1982, which includes the plot in question purchased by the plaintiff-appellant, and therefore the plaintiff-appellant was held not entitled to the grant of permanent injunction. It was further held by the Trial Court that the plaintiff-appellant had not purchased any specific numbers or particular portion vide sale deed dated 02.07.1982 (Ex.PY) but rather had purchased 18/63 share in the total property. It was further held that the suit property was not proved to have been partitioned and that the plaintiff-appellant had failed to prove his exclusive possession over the suit property. The suit was dismissed by the Trial Court. Aggrieved by the judgment and decree, an appeal was preferred by the plaintiff-appellant which was also dismissed vide judgment and decree dated 10.11.2017. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellant would contend that the plaintiff-appellant is in possession of the suit property and there was

sufficient material on the record to prove that the plaintiff-appellant was in exclusive possession of the suit property. According to counsel, the Courts below have erred in dismissing his suit and infact the possession of the plaintiff-appellant deserved to be protected.

Heard.

In the present case the plaintiff-appellant has woefully failed to show his possession over the suit property. Both the Courts below have concurrently found as a matter of fact that the plaintiff-appellant had failed to prove his possession over the suit property. It is trite that in a suit for injunction it is incumbent on the plaintiff to prove his possession over the suit property. The First Appellate Court found that :

“In order to succeed in the present suit for injunction, plaintiff was required to prove his possession over the plot in dispute at the time of filing of the suit. Onus was thus upon the plaintiff and any weakness in the case of the defendant does not help him. A perusal of sale deed dated 02.07.1982 (Ex.PY) shows that 3 kanals 3 marlas land bearing Killa No.1/2 (1-3) and 2 (2-0) was purchased. Jamabandi and khasra girdawri of that land as operative on 02.07.1982 was not produced on the file. Further more, plaintiff purchased 18/63 shares in the aforesaid killa numbers from Santa Singh and others. No revenue record has been produced that he came in possession of specific parcel of land, after such purchase. No mutation containing ‘Tatima Shajra’ was proved on the file. Site plan of the entire 3 kanals 3

marlas was not proved on the file. It was imperative for the plaintiff to produce the revenue record as operative on 02.07.1982 and thereafter and also Akash Shajra and site plan showing specific plots of 3 kanals 3 marlas which were allegedly carved out at the time of sale deed dated 02.07.1982 and thereafter to clarify as to which was that 18 marlas plot that he occupied/possessed on 02.07.1982 and out of that 18 marlas which 9 marlas he sold and which he kept with him. Having failed to lead this material evidence, plaintiff cannot claim possession over specific 9 marlas plot, by relying upon the boundaries as given in one or the other sale deed, produced on the file. No explanation has been furnished that if the plaintiff had got sanctioned a plan of proposed construction over the disputed plot, as early as in 1992, then why proposed construction was not raised by him from 1992 onwards till date. His claim of having constructed the front wall in the year 2003 and installation of an iron gate therein, has been found to be not proved against Sushma Jaiswal, vendor of the defendant. So, plaintiff is found to have not proved himself to be in possession of the plot in dispute.”

Counsel for the plaintiff-appellant has been unable to dislodge the said findings of fact.

It has also been noticed by the First Appellate Court that the electricity, water, telephone connections installed in the plot in question all

stand in the name of defendant-respondent. Some construction thereupon has also been raised by the defendant-respondent. Though it was contended by learned counsel for the plaintiff-appellant that the same was carried out by the defendant-respondent forcibly and during the pendency of the litigation, however, this stand was not proved by way of evidence. There is no evidence on the record to prove that the plaintiff-appellant is in exclusive possession over the suit property.

In view of the above, I do not find any merit in the present appeal. Concurrent findings of fact have been returned by both the Courts below which warrant no interference by this Court. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

(ALKA SARIN)
JUDGE

14.03.2023

jk

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