

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

RSA-5097-2013(O&M)

Date of decision:-17.1.2023

Santosh Kumari

...Appellant

Versus

Kishori Lal and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vipin Mahajan, Advocate
for the appellant.

Mr.Sudeep Mahajan, Advocate with
Ms.Saachi Mahajan, Advocate
for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Santosh Kumari, resident of village Sammu Chack, Tehsil and District Gurdaspur through her General Attorney Sagar Singh son of Bhuri Singh, resident of village Sammu Chack, Tehsil and District Gurdaspur had brought a suit against defendants Kishori Lal, Balwinder Lal, residents of village Sammu Chack Kullian, Tehsil and District Gurdaspur and Gram Panchayat village Sammu Chack Kullian, Tehsil and District Gurdaspur through its Sarpanch, seeking possession after removal of malba, if any, from the land measuring 6 kanals 11 marlas comprised in rectangle No.15

killla No.17(6-11), Khewat No.26, Khatuni No.93 as entered in the jamabandi for the year 2001-02 situated at village Sammu Chack, Had Bast No.296, Tehsil and District Gurdaspur, further seeking consequential relief of mandatory injunction directing the defendants to remove the construction from the abovesaid land.

2. As per the case of the plaintiff, she is owner of the land in question of which defendant No.2 Balwinder Lal is in possession as a tenant; he had been cultivating the land in question in that capacity although not paying the rent to the plaintiff for the last many years; defendant No.1 Kishori Lal is real uncle of defendant No.2 Balwinder Lal and both of them in collusion with each other constructed a room in the land in suit without consent of the plaintiff about a year prior to the filing of the suit (suit was filed on 22.4.2004), whereas defendant No.3 Gram Panchayat of village Sammu Chack Kullian constructed pucca passage towards the room constructed by defendant No.1 without seeking consent of the plaintiff. According to the plaintiff, the possession of the defendants over the land in suit is illegal, wrong, as trespasser and the plaintiff is entitled to get possession of the suit land from the defendants and in case it is found that defendant No.2 has constructed a room in the suit land then the plaintiff is entitled to relief of mandatory injunction issuing direction to remove the construction from the suit land. According to the plaintiff, the defendants refused to vacate the suit land after removal of malba. Feeling aggrieved, she brought the suit in question.

3. On getting notice, the defendants appeared and filed written statements contesting the suit. Defendants No.1 and 2 filed a joint written

statement raking up preliminary objections that the suit was not maintainable in the present form; suit was under valued and not properly stamped; the suit was time barred; the civil Court has no jurisdiction to try the suit. On merits, these defendants while refuting the assertions made by the plaintiff in the plaint contended that they are in actual physical possession of the suit land having constructed their houses way back in the year 1947 after partition of the country; the construction had been raised by defendant No.1 and father of defendant No.2; the construction is in the form of six rooms, kitchens etc. and such construction was raised during life time of original owner Sh.Bachitter Singh, who was father of the present plaintiff; the plaintiff has no right to seek vacant possession of the suit land from the defendants; as a mater of fact Bachitter Singh had executed an agreement to sell dated 25.12.1992 regarding which suit for specific performance was filed and appeal had been pending in the Court of Addl.District Judge(Fast Track Court), Gurdaspur.

In the separate written statement filed by defendant No.3, the averments made in the plaint were vehemently contested on the similar grounds as taken by defendants No.1 and 2 in their joint written statement.

All the defendants prayed for dismissal of the suit.

4. The plaintiff had filed replication to the written statement filed by defendants controverting the allegations in the written statement whereas reiterating the averments in the plaint.

5. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to the possession of the suit

property? OPP.

2. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? OPP.

3. Whether the suit is not maintainable? OPD.

4. Whether the suit is not properly valued for the purpose of Court fee? OPD.

5. Whether the suit is time barred? OPD.

6. Whether the Civil Court has no jurisdiction to try the present suit? OPD.

7. Relief.

6. The parties led evidence in support of their respective claims.

7. During the course of evidence of the plaintiff, she examined Kishan Chand as PW1, Tarsem Singh as PW2 and Sagar Singh as PW3. Thereafter, after tendering jamabandi for the year 2001-02, the plaintiff closed the evidence.

In rebuttal, the defendants examined Baldev Raj as DW1, Kishori Lal defendant No.1 has appeared as DW2. However only their examination in chief had been recorded but they did not turn up to face cross-examination. Therefore their statements cannot be read into evidence.

8. After hearing learned counsel for the parties, the trial Court decided issues No.1 and 2 against the plaintiff, issues No.3 to 6 were decided against the defendants having not been pressed. Resultantly, suit of the plaintiff was dismissed with costs. This was so done vide judgment and decree dated 14.10.2009.

9. Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Gurdaspur, who vide judgment and decree dated 17.7.2013 dismissed the same.

10. Still feeling dissatisfied, the plaintiff has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and her suit be decreed.

11. Notice of the appeal was issued to the respondents, who put in appearance through counsel.

12. I have heard learned counsel for the parties besides going through the record.

13. Both the Courts below on analysis of the evidence produced by the parties in light of their pleadings and legal position on the subject have returned concurrent findings that the plaintiff is not entitled to relief of possession and mandatory injunction for various reasons. Firstly Tarsem Singh witness examined by the plaintiff has admitted the case put forward by the defendants that defendants along with other persons belonging to Mahasha Caste, who had migrated to India after partition of country had constructed their pucca houses in the abadi of the village and they were got settled by Bachitter Singh father of the plaintiff and his brother in village now named as 'Sammu Chak Kullian Mahasha'. He further admitted that Kishori Lal had constructed his house in the suit land and there are other houses abutting the street and street was brick paved by the Gram Panchayat after 18-19 years back and further Bachitter Singh had executed an agreement to sell in favour of Balwinder Singh and

Kishori Lal, who had filed suit on the basis of that agreement. In that way the contention of plaintiff that defendants No.1 and 2 had constructed their houses about a year back to the filing of the suit stood falsified. As such the defendants cannot be said to be in wrongful possession of the suit.

14. Learned District Judge, Gurdaspur, who had heard and dismissed the appeal had made observations in para No.11 of the judgment, which are quite relevant and for ready reference are being reproduced as under:

11. After considering the rival contentions of the parties and after going through the record on the file, I am of the considered view that there is no merit in this appeal and as such, the same deserves dismissal. In order to prove the construction of the house in the suit property, the appellant has not produced or proved on the file any site plan. The suit property is measuring 6 kanal 11 marlas and it has not been disclosed by the appellant that on what side of the suit property the house has been constructed. Even the suit property has not been got demarcated to prove that the alleged house of the appellant is in the suit property itself. Then no evidence whatsoever has been led on the file by the appellant to show that the house in question consists of one room only or that it was constructed, about a year before the filing of the suit. The appellant could have examined a building expert to prove the age of the construction and could also produced the photographs of the suit house on the file, but he did nothing. He has tried to take

benefit out of the suggestions given to the appellant and his witness by the respondent but it is settled law that the plaintiff has to prove his case by leading cogent and reliable evidence and for that he cannot succeed on the basis of the weaknesses of the case of the respondent. For the aforementioned reasons, it is held that the appellant has miserably failed to prove the identity of the property in dispute of which he is seeking possession through this case. Furthermore, it is the case of the respondents that they have constructed the house in the year 1947 and moreover, the panchayat has also given a passage to the house of the respondent. Therefore, it cannot be said that the alleged house was constructed by the respondent at the back of the plaintiff. It is the case of the appellant that the respondent has no concern with the suit property whereas the attorney of the appellant Sagar Singh in his cross-examination has categorically admitted that respondent Kishori Lal is also their Mazara (tenant). Therefore, it cannot be said that he has no connection with the suit property.

15. Both the Courts had rejected the claim of the plaintiff. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees.

16. No substantial question of law or fact arises in this appeal.

17. Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments and decrees passed by the Courts below.

18. The appeal stands dismissed with costs accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

17.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**