

RSA-1945 of 2018 (O&M)

2023:PHHC:133346

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

RSA-1945 of 2018 (O&M)  
Date of decision: 11.10.2023

Satpal

.....Appellant

Versus

Chandar Harzai and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: - Mr. M.K. Singla, Advocate,  
for the appellant.

**NAMIT KUMAR, J.**

1. This Regular Second Appeal is directed against the judgment and decree dated 21.09.2015 passed by the Court of learned Additional Civil Judge (Senior Division), Sunam, whereby suit for declaration, possession and permanent injunction filed by the appellant-plaintiff has been dismissed as well as against the judgment and decree dated 06.10.2017 passed by the Court of learned Additional District Judge, Sangrur, whereby appeal filed by the appellant-plaintiff against the judgment and decree dated 21.09.2015, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Brief facts of the case are that plaintiff filed a suit for declaration, possession and permanent injunction pleading therein that he is exclusive owner of the suit property, as detailed in head note of the plaint, after partition with his

brothers for the last about 35-36 years. The suit property is the part of property falling under khasra no.744(0-12), 745 (0-12), 746 (0-8), 303//21/3(0-2), 304//25/3(3-3), 331//5/1(1-6), 332//1/1(0-5) and 303//21/1(0-9). Defendants have got no concern with the suit property. The plaintiff had been in possession over the suit property, being owner thereof, for about 35-36 years, but in the first week of June, 2010 when he came to Sunam, he saw that defendant no.3, who is his brother namely Bhim Sain's son in connivance and conspiracy with Dr. Yashpal and Dr. Bharat Bhushan broke open the lock of the suit property and forcibly took the possession of the same. The plaintiff has been residing at Faridabad with his family. The plaintiff reported the matter to the police, whereby an inquiry was conducted and in the said inquiry proceedings, defendant no.3 made a statement on 07.06.2010 that neither he broke open the lock of the property of the plaintiff and nor he had unlawfully encroached the same. Thereafter, on the false statement of the defendant no.3 and others, the SHO P.S.City Sunam recommended to file his complaint. The plaintiff moved another complaint dated 13.10.2011, but again, the police did not take any action and when the plaintiff obtained information under RTI Act from the police, he came to know that with the *malafide* intention to cause wrongful loss to him, defendant no.3 had executed a sale deed dated 06.04.2011 *qua* the suit property in favour of defendants no.1 and 2, which is illegal, unlawful, null and void. The plaintiff requested the defendants to admit his claim but they refused.

3. Upon notice, the defendants appeared and filed written statements raising therein preliminary objections inter-alia the plaintiff has not come to the court with clean hands, the suit of the plaintiff is not maintainable in the present form, the suit of the plaintiff is not within limitation, the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction and the plaintiff has got no *locus standi* and cause of action to file the present suit. On merits, the defendants pleaded that the plaintiff has got no right, title and interest in the suit property. The defendants specifically and categorically denied all the remaining averments of plaint with the prayer to dismiss the suit.

4. Replications to the written statements reiterating the contentions of plaint and denying those of the written statements were filed. From the pleadings of parties, following issues were framed by the trial court on 19.08.2011:-

1. Whether the plaintiff is entitled to the relief of declaration and possession as prayed for? OPP
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
3. Whether the plaintiff has no locus standi to file the suit? OPD.
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Whether the suit of plaintiff is not maintainable in the present form? OPD
6. Whether the plaintiff has not come to the court with clean hands? OPD
7. Whether the suit is bad for non-joinder of necessary parties? OPD

8. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
  9. Whether defendants no.1 and 2 are bonafide purchasers for consideration without notice? OPD 1 and 2.
  10. Whether suit is liable to be dismissed with compensatory costs under Section 35A CPC? OPD
  11. Relief.
5. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record dismissed the suit filed by the plaintiff with costs vide judgment and decree dated 21.09.2015.
6. Feeling aggrieved against the said judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 06.10.2017.
7. Learned counsel for the appellants contended that the judgments and decrees passed by both the Courts below are against law and the evidence on record. He further contended that both the Courts have wrongly held that appellant has failed to prove his ownership over the suit property. He further contended that there is sufficient evidence on record to establish the exclusive right of the plaintiff over the suit property. He further contended that sale deed dated 06.04.2011 executed by defendant No.3 in favour of defendants No.1 and 2 qua the suit property, is illegal, unlawful, null and void and the same has got no bearing upon the rights of the plaintiff. He further contended that defendant No.3 has pleaded that the plaintiff had already sold his entire

share, but failed to prove the same and such, the plaintiff is entitled for the relief of possession.

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

9. Appellant filed the suit claiming himself to be exclusive owner of the suit property alleging that he is in possession over his share in the suit property for the last 35-36 years. He has further alleged that he used to make the payment of house tax of the suit property. However, the appellant has failed to prove cogent and reliable evidence to show his exclusive possession over the suit property. There is nothing on the record to show that any partition has taken place between him and his brother regarding the joint property between them. In his cross-examination, appellant has admitted that there is no document or writing showing the alleged partition nor there is any entry in the revenue record to show the alleged partition. As per revenue record, after the demise of Bhim Sain his share has been mutated in favour of respondent-defendant no.3 on the basis of inheritance. Appellant has not produced any revenue record showing that he had been in possession of the suit land for the last 35-36 years nor any receipt *qua* payment of house tax with regard to suit property has been produced. Even the complaint filed by him against the defendants was found to be false.

10. Concurrent findings have been recorded by both the Courts below that plaintiff failed to prove on record that he was in exclusive possession of the suit land. Learned counsel for the appellant has failed

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to show that the findings recorded by Courtsbelow are perverse or illegal or based on misreading,non-reading or mis-appreciation of the materialevidence on record.

11. In view of above, no question of law,muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has beenurged.

12. Dismissed.

13. Pending application(s), if any, stand disposed of accordingly.

11.10.2023  
R.S.

**(NAMIT KUMAR)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No