

RSA-2867 of 2018 (O&M)

2023:PHHC:095111

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

RSA-2867 of 2018 (O&M)
Date of decision: -24.07.2023

Avtar Singh and others

.....Appellants

Versus

Nishan Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. K.B. Raheja, Advocate,
for the appellants.

NAMIT KUMAR, J.

1. This regular second appeal is directed against the judgment and decree dated 26.07.2017 passed by Additional Civil Judge (Senior Division), Guruharsahai, whereby suit for permanent injunction filed by the respondent-plaintiff has been decreed as well as the judgment and decree dated 19.12.2017 passed by Additional District Judge, Ferozepur, whereby appeal filed by the appellant-defendants against the judgment and decree dated 26.07.2017, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The facts relevant for disposal of this regular second appeal are that plaintiff filed a suit for permanent injunction on the ground that he is owner in possession of the suit land measuring 2 marlas situated at village Madi Ke, Tehsil Guruharsahai.

Defendants have got no concern with the same. Defendants have collected construction material near the suit land and are threatening to raise construction thereon, of which they have no right. In case, they succeed in their designs, plaintiff will suffer irreparable loss. They were asked not to do so, but they are adamant.

3. On notice, defendants No.1 to 3 appeared and filed written statement, contesting the suit. Preliminary objections were taken that plaintiff has concealed material facts from the court. He has not submitted site plan of the suit land, which is under the possession of answering defendants for the last more than 35 years. Kartar Kaur, widow of Gurdit Singh, mother of plaintiff, sold land measuring 15 marlas i.e. 13 marlas falling in 'Lal lakeer' and two marlas out of Lal lakeer, by a writing in presence of Sarpanch of the village and other witness. Thereafter, plaintiff and Kartar Kaur did not reside in the village and went somewhere else. A few months back, plaintiff has returned to village and wants to grab the suit property. That suit property falls in middle of residential land of about four kanals of the answering defendants, on which defendants have their residences consisting of houses etc. Suit land bearing Killa No. 16/9(0-2) falls in between khasra number and killa number of the answering defendants. No partition of land has ever taken place between the co-sharers and there is no demarcation of any portion of the land. Plaintiff is trying to change the revenue entries by way of '*Farad Badar*'. That the suit is bad for non-joinder of necessary parties. Other co-sharers have intentionally not been made parties. Defendant No.4 has got no concern

with the suit land. Suit is not maintainable in the present form A local commissioner may be appointed to ascertain actual and factual position of the suit property. While replying on merits, aforementioned pleas were reiterated. It was finally prayed that the suit be dismissed.

4. Plaintiff withdrew the suit against defendant No.4 on 11.08.2016.

5. Replication was filed. From the pleadings of parties, following issues were framed by the learned trial court on 20.01.2017:-

1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP.
2. Whether the plaintiff has not come to the court with clean hands and concealed the material and true facts from the Court? OPD.
3. Whether the suit is bad for non-joinder of necessary parties? OPD.
4. Whether the suit of the plaintiff is not maintainable? OPD.
5. Whether the suit is misuse of the process of law? OPD.
6. Relief.

6. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record decreed the suit of the plaintiff. Against the judgment and decree of the Court of first instance, appeal preferred by the appellants has been dismissed and the judgment and decree of the Court of first instance has been affirmed by the lower appellate Court. Hence, this regular second appeal.

7. Learned counsel for the appellants has vehemently contended that judgments and decrees passed by both the Courts below

are against law and the evidence on record. He further contended that plaintiff himself did not appear as a witness and for his non-appearance adverse inference should have been drawn against him. He further contended that from Ex.D-1 it stands proved that suit land along with some other land was sold by Smt. Kartar Kaur, mother of the plaintiff, to the defendants for valuable consideration and defendants are in possession of the same from the date of its purchase.

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

9. Plaintiff claimed himself to be owner in possession of the suit land. As per jamabandi Ex. P-2 plaintiff is recorded as owner in possession of the suit land. Defendants have failed to lead evidence to rebut the same. Defendants claimed to have purchased disputed suit land measuring 2 marlas as well as some other 13 marlas of land from Kartar Kaur, mother of the plaintiff, vide writing Ex.D-1. In the said writing no description/detail of the property has been given and the same is undated and unregistered document. To prove writing Ex.D-1 defendants examined Balwinder Singh, Ex-Sarpanch of village Madi Ke as DW2, who stated that the said writing is with his hand. He further stated that the date, month or day was not mentioned in Ex.D1 and it was also not mentioned in Ex.D1 from whom Kartar Kaur received the amount of Rs.12,000/- and to whom she sold the property regarding which the writing Ex.D1 was executed. DW2 in his cross-examination further stated that defendants have not got registered any sale deed in their favour regarding 2 marlas of land. Therefore, Ex.D1

is not a valid document. Being unregistered document the same is not admissible in evidence. Moreover such possession of defendants after purchase was never reflected in the revenue record. No *aksh sajra* has been placed on record in support of their claim. Claim of the defendants that the suit land falls in between the other land owned by them also remained unproved. No revenue record of such other land of the defendants was proved. Thus, plaintiff has duly prove the revenue record i.e. jamabandi Ex. P-2 which showing his ownership and possession over the suit land and the same remained unrebutted and as such, plaintiff has been rightly held entitled to the relief of injunction by the learned trial court. Defendants failed to lead any evidence to prove their title or possession of the suit land. So even if plaintiff himself did not step into the witness box, that does not help the case of the defendants. PW1 Sat Pal Kaur is none else but wife of the plaintiff and as such must be having personal knowledge of the entire facts. So her statement as attorney of the plaintiff cannot be even otherwise ignored/rejected.

10. Concurrent finding has been recorded by both the Courts below that plaintiff has duly proved himself to be owner in possession of the suit land. Learned counsel for the appellants has failed to show that the findings recorded by Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

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

12. Dismissed in limine.

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

24.07.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No