

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA No.3786 of 2018(O&M)
Date of Decision:11.08.2023

BALBIR SINGH (SINCE DECEASED) THRU LRAppellant

Versus

TARLOCHAN SINGH AND ORS ...Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Kanwar Pahul Singh, Advocate for the appellant.

SANJAY VASHISTH, J.(Oral)

1. Present appeal has been instituted by the appellant/defendant against the concurrent findings of decretal of suit in favour of the plaintiff/respondent(Tarlochan Singh).

2. Plaintiff filed the suit against the defendant, who is related as his real brother and sought a decree of permanent injunction restraining the defendant from interfering in any manner or dispossess the plaintiff forcibly and **except by adopting the due course of law** from the property bearing private No.1339, and B-II, 49.5/2054 having total area of 370 square yards i.e. 475.23 sq feet, situated at Gali Telian Wali, Inside Ghee Mandi, Amritsar.

3. It is pleaded case that the property in question initially belongs to one Deewan Singh (father of plaintiff and defendant), who expired on 18.10.1983 leaving behind Balwant Singh, Balbir Singh and Tarlochan Singh as his sons and Pritam Kaur and Jit Kaur as his

daughters.

4. In the written statement, defendant has not disputed the fact that the property was initially owned by their father-Deewan Singh, who expired on 18.10.1983, however, disputed the fact that the plaintiff is occupying the property in question, defendant pleaded that infact plaintiff was residing at Jalandhar.

5. On the basis of pleadings, learned trial Court framed total six issues, which reads as under:

'1. Whether the plaintiff is entitled to permanent injunction, as prayed for? OPP.

2. Whether suit is not maintainable in the present form as prayed for?OPD.

3. Whether the plaintiff has not approached Court with clean hands and suppressed material facts? OPD.

4. Whether the plaintiff has no cause of action in the present suit? OPD.

5. Whether the suit is bad for mis-joinder and non-joinder of the necessary parties? OPD.

6. Relief.'

6. Both the Courts have found that the suit is simpliciter for seeking a decree of permanent injunction to the effect that the defendant be restrained from interfering into or dispossessing the plaintiff **forcibly and except by adopting the due course of law.** There is a fact finding by both the Courts that the plaintiff is found to be in exclusive possession of the suit property. Moreover, plaintiff has not sought any rights of sole ownership in the suit property and the right of the defendant has also been taken care of while decreeing the suit, because as per the case of the plaintiff itself, he can be evicted from

the property in question in due course of law and the injunction has been sought against the dispossession by way of forcible and illegal means.

7. For the sake of convenience, findings given by the First Appellate Court in paragraph Nos. 20 and 21 are reproduced hereunder:

'20. The aforesaid pleadings would depict that there is no dispute with regard to the fact that suit property was owned by Sh. Deewan Singh and that he has died. The instant suit is simplicitor suit for permanent injunction as such the title is not to be seen and the plaintiff by virtue of the present suit is simply seeking injunction against the defendant for not dispossessing him forcibly except in due course of law whereas the claim has been resisted by the defendant on the score that plaintiff is not in possession of the suit property rather Rajvir Singh is in possession of the suit property. The aforesaid testimony of the plaintiff has established that he is in possession of the suit property rather in the cross-examination of the plaintiff and witnesses examined by the plaintiff nothing could be elicited which could suggest that plaintiff is not in possession of the suit property. It is apposite to mention here that the fact of possession of the plaintiff has been admitted by DW3 Rajvir Singh also. He has specifically admitted that at present Tarlochan Singh is in possession of the suit property. He has also admitted that prior to filing of the present suit by the plaintiff against his father he had filed suit for injunction in respect of the same property against the plaintiff and

Balwant Singh volunteered the same has been withdrawn as Tarlochan Singh had forcibly taken the possession of such property after criminally tress-passing into the same. He has further admitted that now he has filed the Suit for mandatory Injunction against Tarlochan Singh for getting possession of the property. The aforesaid admission of DW3 Rajvir Singh amply clears the mist around the fact of possession of the plaintiff over the suit property. Even otherwise, it is well settled canon of law that the admission is the best evidence and when the fact of possession of the plaintiff is admitted, then it stands established that there is no illegality in the impugned Judgment and decree.'

21. *Ld. Counsel for the appellant has argued that impugned order is against the law and facts and is liable to be set aside. He further argued that Ld. Trial court has erred in relying upon the witness of the defendant and evidence of the defendant has not been appreciated and it has not been considered statement of the witness is to be read as whole and not a part thereof. He further argued that plaintiff has failed to establish his possession over the suit property as there is neither any document nor any evidence that he is in possession of the property in dispute and even the site plan has not been produced. The aforesaid contentions are without any merit in view of aforesaid discussion and in view of the admission of the defendant's son Rajvir Singh who appeared as DW3 with whom it has been alleged that he is in possession. The admission of DW3 that plaintiff is in possession and he has filed suit for Mandatory Injunction against the plaintiff for getting possession of the*

property makes the aforesaid contentions meritless. Infact after the aforesaid admission there is no requirement of any document nor any evidence. Moreso, the plaintiff and other witnesses have been extensively cross-examined, but nothing could be elicited from their mouth which could supplement the plea of the defendant.'

8. Considering the fact that the finding of fact has been given by both the Courts below and the counsel is unable to point out any illegality, perversity in the said findings or the manner of appreciation adopted by the Courts below with regard to the evidence, resultantly, **impugned judgment and decree are hereby maintained.** The present appeal stands dismissed.

9. As the appeal has been dealt with on merits, this Court does not find any reason to deal with the the application i.e. CM-9698-C of 2018, thus, application stands dismissed.

**[SANJAY VASHISTH]
JUDGE**

August 11, 2023
rashmi

Whether speaking/reasoned
Whether reportable?

Yes/no
Yes/no