

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

RSA-5562-2017(O&M)

Reserved on:-5.5.2023

Date of Pronouncement:-12.5.2023

Krishan Lal

...Appellant

Versus

Lakhdata Peer and others

...Respondents

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

Present: Mr.D.S. Malwai, Advocate
for the appellant.

Mr.Balbir Singh, Advocate
for respondent No.1.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Lakhdata Peer village Sauna, Tehsil and District SBS Nagar through one Rajinder Singh had brought a suit against defendants Krishan Lal son of Rakha Ram, resident of village Sauna, Tehsil and District SBS Nagar and 13 others, mostly residents of that very village, for possession of property measuring 0 kanal 11 marlas bearing khata No.129/171, 172, khasra nos.86 min(0-6)(West), 86 min(East)(0-5) as entered in the jamabandi for the year 2005-06 situated in the abadi of village Sauna, Tehsil and District SBS Nagar.

2. According to the plaintiff, the defendants are in unauthorized possession of the land, which is owned by the plaintiff on the basis of a registered sale deed dated 30.8.1999 executed by one Chinti widow of late Siri Ram; in the earlier litigation, which was decided vide judgment and decree, copies Ex.P1 and Ex.P2, the plaintiff was held to be owner of the suit property, however since it was found to be in possession of defendants so the plaintiff was asked to take possession as per law, therefore, the plaintiff had brought the suit in question.

3. On notice, only defendant No.1 had put in appearance to offer a contest, whereas remaining defendants did not appear despite service, as such they were proceeded against ex-parte.

In the written statement filed by defendant No.1, he had raised various legal objections with regard to locus standi of the plaintiff to bring the suit; maintainability of the suit; the suit being bad for non-joinder and mis-joinder of necessary parties etc. On merits, such defendant contested the averments in the plaint stating that he is son of late Lakha Ram, who along with Battan Singh was owner of this property for the reason of the same being allotted to their forefathers; the land could not be transferred further, therefore, the sale deed executed by Chinti was illegal, null and void not conferring any title upon the plaintiff. Denying the remaining averments, such defendant prayed for dismissal of the suit.

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

1. Whether the plaintiff is entitled to possession of property as fully

detailed in the head note of the plaint? OPP

2. If issue no.1 is proved whether the plaintiff is entitled to injunction, as prayed for? OPP

3. Whether the plaintiff has no locus standi to file the present suit? OPD

4. Whether the suit of the plaintiff is not maintainable in the present form? OPD

5. Whether the suit of the plaintiff is bad for nonjoinder and mis-joinder of necessary party? OPD

6. Whether the plaintiff's suit has been properly valued for the purpose of Court fee and jurisdiction? OPD

7. Relief.

5. The parties were afforded opportunities to lead evidence in support of their respective claims.

6. After hearing the learned counsel for the parties, the trial Court of Addl.Civil Judge (Sr.Divn.), SBS Nagar gave issue-wise findings and vide judgment and decree dated 23.2.2015 decreed the suit of the plaintiff finding him entitled to possession of the suit property and further the defendants were restrained from raising any type of construction over the suit property forcibly and illegally or changing its nature and identity. The defendants were directed to hand over the possession of the suit property to the plaintiff within a period of three months.

7. Feeling aggrieved by the said judgment and decree, the defendants No.1, 13 and 14 had filed an appeal in the Court of District Judge, SBS Nagar, who vide judgment and decree dated 18.5.2017 dismissed the appeal upholding the judgment and decree passed by the

trial Court.

8. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendant No.1 has filed the present regular second appeal before this Court.

9. Notice of the appeal was given to the respondents and respondent No.1 has put in appearance through counsel.

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

11. The trial Court by proper understanding of the factual position analysing the evidence brought on record by the contestants in light of the legal position had returned a clear finding that the plaintiff was owner of the suit property because in a suit filed by the defendant earlier against the present plaintiff, it was held by the Civil Court that Chinti real owner of the suit property had executed a sale deed in favour of Lakhdata Peer. However, the possession was with the plaintiff Krishan Lal etc. in that suit, who are defendants in the instant suit. The suit was partly decreed vide which the defendant in that suit i.e. the present plaintiff was directed not to dispossess the plaintiff except in due course of law, which is evident from the copy of judgment in that civil suit Ex.P2 and copy of decree-sheet Ex.P2/A. The said Chinti is shown to be owner of the suit property in the revenue record. The defendants could not place on record any document to show their title to the suit property or establish that their possession was legal.

12. Learned District Judge, SBS Nagar has also found himself in agreement with the trial Court on material aspects finding plaintiff to be

owner of the suit property on the basis of sale deed executed by previous owner Chinti wife of late Siri Ram in favour of the plaintiff vide sale deed dated 30.8.1999 for a consideration amount of Rs.83,000/-. The case of the defendants that the suit property had given to their forefathers by village community on account of services rendered by them was not found to be proved for lack of evidence in that regard.

13. Both the Courts were unanimous in accepting the claim of the plaintiff and rejecting the version set up by the defendants.

14. With the concurrent findings having been recorded by the Courts below against the appellant/defendant, which are based on proper appraisal of evidence and correct interpretation of law and there being no illegality or infirmity with the impugned judgments and decrees passed by the Courts below, there is no ground to interfere with such impugned judgments and decrees in regular second appeal.

15. No substantial question of law arises in this appeal.

16. Finding no merit in the appeal, the same stands dismissed.

The interim order dated 2.2.2018 passed by this Court staying the dispossession of the appellant, thus comes to an end.

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

12.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No