

119 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA-5418-2018 (O&M)
Date of decision 31.08.2023

PRABHDEEP SINGHAppellant
VERSES

MANPREET SINGH AND ORS ...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present:- Mr. Vikas Gupta, Advocate,
for the appellant.

SANJAY VASHISTH, J (Oral):

1. The present regular second appeal has been filed by defendant No.2-Prabhdeep Singh against the concurrent findings of decreetal of suit by both the courts below.
2. Plaintiff filed a suit for permanent injunction by pleading that his father Mohinder Singh had purchased 5 marlas of vacant plot bounded in *Abadi deh* of Village Bagarian, Tehsil and District Tarn Taran from one Jagir Singh s/o Ujjagar Singh (defendant No.4) for a valuable sale consideration of Rs.5000/- vide registered sale deed dated 23.11.1995 along with its possession. The existence of the plot was projected in the suit by way of a site plan alongwith the directions and the bounded area surrounding it.
3. Suit was contested by defendant No.2 only (appellant herein) who submitted that in fact, the land falls in Khasra No.140(0-6) and submitted that vide sale deed dated 29.02.2012, he had purchased the plot, measuring 4-1/2 Marlas out of Khasra No.140(0-6) from Dalwinder Singh (defendant No.1). In the sale deed of the year 2012, relied upon by the defendant

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No.2, boundaries of the plot were also mentioned. After considering the pleadings in the evidence, the learned trial Court reached to the conclusion that identity mentioned in the sale deed (Exhibit-D1) which has been relied upon by defendant No.2, comprising Khasra No.140 measuring (0-6) has different sides in contrast to sides mentioned in sale deed (Exhibit P-1).

The findings given in paragraph 14 by the trial Court says under:

“14.After giving thoughtful consideration is the rival submissions so made on behalf of the counsels for me parties this court has gone through the entire record of the Judicial File. This Court is of considered view that the plaintiff through his sale deed dated 23.11.1995 has purchased the property having boundaries such as East:- Vendors Jagir Singh etc. West:-Building of Co-operative Society North:-Gali South:-Cooperative Society, Amrik Singh Charanjit Singh as shown red in the site plan attached situated in abadi-deh of village Bagrian Tehall and District Tarn Taran and the same property is the suit land. Through the site plan EXP1/A the plaintiff has proved the identity of the suit property and has also proved through the statement of Kulwant Singh draftsman that it is the plaintiff who is in possession of the suit property. Defendant has failed to rebut the identity of suit property by producing his own site plan. More over the plaintiff in order to prove his possession further has proved the demarcation report EXP5 and that demarcation report has been proved by Kanungo and he being a public servant has prepared the said report in discharge of his public duty, therefore this document is a public document and has been brought from proper custody i.e. revenue department and is perse admissible document. More over the plaintiff has placed on record the electricity bills though have not been exhibited or that have been marked documents but there is no bar for the court to take judicial notice of those independent documents which are in favour of the plaintiff and prove possession of the plaintiffs over the suit land. DW2 Avtar Singh in his cross examination has stated that Manpreet Singh plaintiff is resident of village Bagrian Since 1980 and his ration card is at the same address and his vote has also been from the same village. More over the land which has Seen purchased by defendant through sale deed EXD1 is comprised in Khasra No. 140

measuring (0-6) and it has got different sides as are closed in the sale deed itself and those sides are different from the sides as those are mentioned in sale deed EXP1. Therefore the land purchased by defendant no. 2 has got nothing to do with the land that has been purchased by defendant No.2. It is very rightly contended by Counsel for plaintiff that once the property has been sold by Nishan Singh and Jagir Singh in favour of Mohinder Singh father of the plaintiff by virtue of sale deed dated 23.11.1995 then there was no reason for Dalwinder Singh to sell the said land in favour of defendant No.2. The defendant no. 2 cannot be said to have acquired title in respect of the suit land which is actually owned by plaintiff. The plaintiff being owner of the suit property entitled to protect his property which is mentioned in boundaries as fully explained in sale deed EXP1. Therefore there is no reason that as to why plaintiff should not be held entitled to the relief of injunction as prayed for by him and is covered by issue no. 1. Accordingly issue no. 1 has been proved by the plaintiff successfully and the same is hereby decided in favour of the plaintiff and against defendant No.2.”

4. When the issue reached before the First Appellate Court again, the evidence led by both the sides i.e. plaintiff and defendant No.2 was examined and appellate Court even concluded that in fact, the purchase in favour of the father of the plaintiff was through the registered sale deed dated 23.11.1995 and defendant No.2 had purchased the area 4-1/2 marlas from Dalwinder Singh vide registered sale deed dated 29.02.2012, therefore, the subsequent sale deed cannot be taken into consideration as the said Dalwinder Singh was left with no right in the suit property, which had already been sold out to the plaintiff's father in the year 1995.

First Appellate Court even concluded that property mentioned in Exhibit D-1, is quite different to the property mentioned in sale deed, as boundaries of both the properties are different. In other words, it is

concluded that the property described by defendant No.2 is quite different

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to the property detailed by the plaintiff.

5. Even dual plea taken by the defendant No.2 is also noticed wherein on the one hand, he pleaded that through the registered sale deed, he has become owner in possession of the property and on the other hand, he claimed his hostile possession over it. Thus, defendant No.2 can't blow hot and cold in the same breath. Findings recorded in paragraph 12 by the appellate Court are as under:

“12.As is apparent from the record the plaintiff/respondent no 1 had filed a suit for permanent injunction claiming that he is in possession over the suit property measuring 5 marlas which is situated within the Abadi Deh. It is the case of respondent no 1/plaintiff that he had purchased the suit land vide registered sale deed dated 23.11.1995 from Jagir Singh defendant no.3 and Nishan Singh defendant no. 4 for sale consideration of Rs. 5,000/- As is apparent from the evidence led on file by the respondent no. 1/plaintiff, the site plan of the suit property has been proved on file as Ex. PW1/A which corroborates the averments of the plaint that the suit property is situated within the Abadi Deh of village Bagarian. As far as possession and ownership is concerned, Ex. P1 is the sale deed proved on file by the respondent no.1/plaintiff with regard to the suit property which he had purchased for sale consideration of Rs. 5,000/- from respondents no. 3 and 4. Thus, the respondent no.1/plaintiff had led oral and documentary evidence as referred to above which clearly proved on file that he is owner in possession over the suit property. As far as the claim of the appellant is concerned, he has claimed that he purchased 4% marlas of land comprising khasra no. 140 from Dalwinder Singh vide registered sale deed dated 29.02.2012 but the fact remains that the said sale deed cannot be taken into consideration as said Dalwinder

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Singh had no right in the suit property wherein it was already sold to the respondent no.1/plaintiff. It is nowhere proved on file by the appellant that he ever came into the possession over the suit property. Further more, the property mentioned in Ex. D1 and said sale deed is different from the property in dispute as boundaries of both the properties are different. Hence, the property in dispute is different from the property on which the possession is claimed by the appellant. More so, the appellant is taking two contradictory stands ie one is that he has purchased the suit property vide registered sale deed and on the other hand he has also taken the plea that he is in possession of the suit property which is open and hostile to the knowledge of all. As mentioned in earlier part of the judgment, possession over the suit property is proved to be that of the respondent no.1/plaintiff. Thus, under these circumstances, the approach of the learned trial court was fully justified in relying upon the sale deed of the suit property Ex. P1 vide which the respondent no.1/plaintiff purchased the suit property. It rightly decreed the suit for permanent injunction in favour of the respondent no.1/plaintiff. Hence the contentions of learned counsel for the appellant are not acceptable.”

6. Concurrent finding of fact has already been recorded by two Courts below, thus, I do not find any substantial reason to interfere with the said factual finding and therefore, the impugned judgment and decree is hereby maintained by dismissing the present regular second appeal.
7. Ordered accordingly.

31.08.2023
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(SANJAY VASHISTH)
JUDGE