

CM-1884-C-2023 IN/AND
RSA-157-2020 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-1884-C-2023 IN/AND
RSA-157-2020 (O&M)
Date of decision: May 17, 2023

Gurdeep Singh

....Appellant

versus

Malkiat Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Kamal Narula, Advocate for the applicant-appellant.

ARUN MONGA, J. (ORAL)

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For the reasons stated in application, same is allowed. Main case, which was dismissed in default vide order dated 31.01.2023, is restored to its original number and the same is being taken up on Board for hearing today itself.

Main case (O&M)

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, appellant/plaintiff is in second appeal before this Court assailing learned trial Court judgment and decree dated 20.02.2019, as upheld by learned First Appellate Court vide its judgment and decree dated 23.09.2019, whereby suit of the plaintiff was dismissed. Plaintiff had filed suit for permanent injunction restraining defendant from causing interference, in any manner, into the lawful and peaceful possession of plaintiff over the suit property.

3. Briefly stated, facts noticed by learned Courts, are as below:

“2. Brief facts of the case of the plaintiff are that earlier Arjan Singh son of Buta Singh, father of the parties, was owner in possession of the suit property and during his lifetime, he had given the same to the plaintiff and his brother namely Surjit Singh in equal share vide registered Will dated 26.06.1992. It is further submitted that after the death of Arjan Singh, plaintiff and his brother Surjit Singh have become owner of the suit property to the extent of ½ share each. It is further submitted that Surjit Singh has delivered the possession of his ½ share in favour of the plaintiff many years ago and since then, the plaintiff is in actual possession of the entire suit property on the spot and he has been residing therein alongwith his family since long. The plaintiff has got voter card and Aadhar card and even the electric meter installed in the suit property in the name of Arjan Singh, his father and the plaintiff has been using the same for his domestic use and has been paying the bills to the PSPCL. The possession of the plaintiff is open, hostile as owner and the defendant has no concern with the suit land. However, the defendant is threatening the plaintiff to dispossess the plaintiff from the suit property. Hence, the present suit.”

4. Upon notice, defendant appeared and filed written statement raising preliminary objections that suit was not maintainable, plaintiff was estopped from filing suit; plaintiff concealed facts from the Court; suit was bad for non-joinder/ mis-joinder of necessary parties; suit was barred by Section 41(h) of Specific Relief Act.

4.1. On merits, it was submitted that plaintiff had no interest in the suit land because land belonged to Punjab Government and there was road being used by BSF soldiers and villagers of many villages.

4.2. Further, it was averred that plaintiff had sold his entire share and nothing remained in village Chak Chhanga Rai Hithar. Defendant never tried to dispossess the plaintiff. Remaining material averments were denied and prayer for dismissal of the suit was made.

5. Replication was filed by plaintiff, reiterating averments contained in plaint and denying that of written statement.

6. Based on the rival pleadings, following issues were framed:

“1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP.

2. *Whether the suit of the plaintiff is not maintainable? OPD.*
3. *Whether the plaintiff has not come to the court with clean hands? OPD*
4. *Whether the suit of the plaintiff is bad for non-joinder or mis-joinder of necessary parties? OPD*
5. *Relief.”*

7. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

8. On appraisal of evidence vis-à-vis pleadings, learned trial Court decided issues No.1 and 3 against the plaintiff and in favour of defendant. Issues No.2 and 4 were decided against defendant and in favour of plaintiff. Consequently, suit filed by the plaintiff was dismissed.

9. Feeling aggrieved against the said judgment and decree dated 20.02.2019, appellant/plaintiff preferred first appeal.

10. Learned First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

11. Learned counsel for appellants would contend that learned trial Court ignored documentary evidence produced by plaintiff on the file, wrongly drew conclusion against him and relied on self-serving oral statement of respondent. He would further contend that while appearing in the witness box, plaintiff produced I.D. proof which shows that he was actually residing on the same land and respondent/ defendant with *mala fide* intention interfered in the same.

12. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the findings returned by learned Courts below are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record.

13. Heard.

14. Appositely, plaintiff and defendants are real brothers and sons of deceased Arjun Singh.

15. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“14. The above stated Will is executed by Arjun Singh father of plaintiff and defendants and the above stated Will relates to the property of his father which is situated in village Chak Sarkar and the land in dispute is situated at village Changa Rai Hithar. So, the above stated will is also not helpful to the case of plaintiff. It means that plaintiff is neither owner nor in possession of the property in dispute.

15. As far as other witnesses are concerned i.e., PW2 Surjit Singh his brother, he also admitted that they had already sold the land which had come to their share from their father. The property in dispute is ownership of canal department. It means that the above stated witness also admitted that land in dispute belongs to canal department and they have nothing to do with it.

16. The plaintiff has also examined another witness PW3 Raj Singh who also admitted that both the parties i.e., plaintiff and, defendant alongwith one Surjit Singh are real brothers. Their father Arjun Singh had land in village Chak Sarkar and Telu Puga Society which have already been sold.

17. So, there is nothing in the evidence of above stated witness which supported the plea of plaintiff. The plaintiff has not placed on record any document from which it can be inferred that he is in possession of the property in dispute. He even failed to produce on record the revenue record of the property in dispute, though admittedly there is jamabandi of the property in dispute which is owned by canal department. So, the plaintiff has miserably failed to prove the possession over the property in dispute. So, he is not entitled to the relief of permanent injunction as prayed for. Hence the learned trial court has rightly dismissed the suit of the appellant/plaintiff. Accordingly, the appeal stands dismissed. Decree sheet be prepared accordingly. Trial Court record be returned along with copy of this judgment and the appeal file be consigned to the record room.”

16. Having perused the impugned judgments, my considered opinion is that the same submissions made before learned Courts below were duly considered and repelled and the concurrent findings of fact recorded by the two Courts below were correctly recorded by giving sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are contrary to record and are based on conjectures and surmises.

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- 16.1 No new arguments have been raised other than reiteration of the stand taken before learned Courts below.
17. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.
18. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.
19. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.
20. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
21. Pending application(s), if any, shall also stand disposed of.
22. No order as to costs.

(ARUN MONGA)
JUDGE

May 17, 2023
mahavir

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No