

RSA-9675 of 2018 (O&M)

2023:PHHC:113441

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

RSA-9675 of 2018 (O&M)
Date of decision: 29.08.2023

Jagpal Singh

.....Appellant

Versus

Bhim Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Nipun Bhardwaj, Advocate,
for Mr. Vinod Bhardwaj, Advocate,
for the appellant.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 21.10.2015 passed by the Court of learned Additional Civil Judge (Senior Division), Kaithal, whereby suit of the appellant-plaintiff for declaration and permanent injunction was dismissed as well as against the judgment and decree dated 13.09.2018 passed by the Court of learned Additional District Judge, Kaithal, vide which the appeal filed by the appellant-plaintiff against the judgment and decree of the trial Court, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Briefly stated, plaintiffs filed a suit for declaration and permanent injunction pleading that Maman son of Sheonath was owner of land measuring 40 bigha 8 bishwa comprised in khasra No.7914-9909/7918/1, 9676/7924/9678/8633, 9680/8782,

RSA-9675 of 2018 (O&M)

2023:PHHC:113441

9106/7994, 9677/77924 and 9914/9107 situated within the revenue estate of village Balu, Tehsil Narwana, then District Sangrur now district Kaithal. In consolidation proceeding, in lieu of above land, land measuring 89 kanals 2 marlas bearing new numbers vide farad jamabandi for the year 1969-70 (post consolidation numbers khewat No. 622, khatoni No. 726, Rect./kill Nos. 147//18, 19, 20/2, 21/1, 22, 23, 279//21, 22/1, 296//9, 10 and khasra No. 830 (0-18), 1857(0-3) bearing 62 kanals 18 marlas khatoni no. 727, Rect./killa No. 296//1, 2, 11, 12/1 measuring 26 kanals 4 marlas kittas 4, was allotted. Thus land measuring 89 kanals 2 marlas, kittas 16 situated within the revenue estate of village Balu, then Tehsil Narwana, District Jind. The present description of the land is khewat No. 935, khatoni No. 1104, Rect./killa No. 279//21, 22/1, 296/9, 10 and khasra No. 1857 (0-3), khatoni No. 1105, Rect./killa No. 296//1, 2, 11, 12/1, khewat No. 936, khatoni no. 1106, rect./killa No. 147//21/2, 22 and khewat No. 938, khatoni no. 1108, rect. Killa No. 147//18, 19, 20/2, 23 vide jamabandi for the year 2004-05 situated in revenue estate of village Balu, Tehsil Kalayat, District Kaithal. Land measuring 65 kanals 14 marlas comprised in khewat No. 935, khatoni No. 1104, Rect./killa No. 279//21, 22/1, 296/9, 10 and khasra No. 1857 (0-3), khatoni No. 1105, Rect./killa No. 296//1, 2, 11, 12/1 and khewat No. 936, khatoni no. 1106, rect./killa No. 147//21/2, 22, is suit land. Land comprised in khewat No. 938, khatoni no. 1108, rect. Killa No. 147//18, 19, 20/2, 23 along with khasra No. 830 was purchased by defendants no. 1 to 3 and the plaintiff by mutual consent from the owners. Dhan Singh, father of plaintiff and

Baru, father of defendants no. 1 to 5 were in cultivating possession of land in equal shares as owners, which was earlier owned by Moman son of Sheonath, openly, peacefully without any interruption, continuously claiming hostile title as owners before consolidation and continues as such till the death of Dhan Singh. Thereafter, half share of the land of Dhan Singh was inherited by plaintiff with the consent of other heirs of Dhan Singh. Plaintiff remained owner openly, peacefully, continuously without any interruption as owner hostile to Moman and after his death to his LRs. The plaintiff is legally entitled to continue in possession till the partition is got effected by defendants no. 1 to 3 or other legal heirs of Baru. After the death of Baru Ram son of Bir Singh, his rights were inherited by defendants No. 1 to 5 but possession continued with defendants no. 1 to 3 as their sisters did not claim any right as they were married outside. No partition has been effected between LRs of Dhan Singh i.e. plaintiff and LRs of Baru i.e. defendants no. 1 to 3. They continued in possession jointly like their predecessors. Moman was actually living somewhere in a village in Sunam Tehsil of Punjab. He was in police department at Hazuri Garden, Moti Bag, Patiala. He was not in possession of the suit land even before consolidation and he filed a suit for possession against Baru and Dhan Singh son of Bir Singh. The said suit was decreed on 31.05.1966. As per decree dated 31.05.1966, the claim of defendants that they had become owners by adverse possession, falsified. Appeal filed by Baru and Dhan Singh was also dismissed on 25.03.1969. Regular Second Appeal filed against the said judgment dated

25.03.1969 was also dismissed on 06.01.1976. Shri Moman and his Lrs did not file any execution. The possession of plaintiff and defendants no. 1 to 3 remain continue after the death of Dhan Singh and Baru. The revenue record of ownership was not correctly recorded. The possession of predecessors of plaintiff and defendants no. 1 to 3 continued as before as adverse possession as owner, peacefully, continuously openly without any interruption. Limitation for filing execution is 12 years for possession. After expiry of 12 years from 06.01.1976, plaintiff had become owner by adverse possession of half share of suit land and defendants no. 1 to 3 have no right to interfere into the possession of plaintiff or to oust him, as no partition has been got effected. Entry in the name of Moman is wrongly continuing in revenue record or subsequent entries in the name of ownership column in favour of defendants no. 1 to 3 or defendant no.8. Defendants no. 1 to 3 came at the spot two months back and threatened the plaintiff to interfere in his peaceful possession. They also tried to dispossess him from the suit land but their attempt was foiled by timely intervention of plaintiff and respectables of the village. Plaintiff requested the defendants no. 1 to 3 to admit his claim but they are adamant and refused to admit his claim.

3. On notice defendants No. 1 to 5 appeared and filed their joint written statement. They raised preliminary objection with regard to maintainability; *locus-standi*; cause of action; verification and suppression of true and material facts; non-joinder and mis-joinder of parties. Plaintiff is a quarrelsome person. He is habit of filing false and

bogus suit. Defendant no. 1 is a bonafide purchaser of land of heirs of Shri Moman son of Shri Sheonath namely Labh Singh, Smt. Chand Kaur widow, Amarjeet Kaur, daughter, Amarjeet Singh, Jagpan Singh sons, Baljeet Kaur daughter and Raghbir Singh son of Moman and sale in favour of defendant no. 1 is protected under section 41 of the Transfer of Property Act. The defendant no. 1 is in possession of suit land as detailed and described in Jamabandi of the year 2004-05, relating to the suit land. There were some litigation between Moman on one hand and Baru and Dhan Singh on other hand. There was no question of filing of execution as Moman had taken the possession. The revenue entries are according to factual position. Defendant no. 1 purchased the land measuring 7 kanals 7 marlas from Labh Singh son of Moman vide sale deed no. 506/1 dated 20.06.2000, land measuring 29 kanals 8 marlas from Smt. Chand Kaur widow of Moman, Smt. Amarjeet Kaur daughter of Moman, Amarjeet Singh, Jagpan Singh sons of Moman vide sale deed No. 1223/1 dated 05.12.2000, land measuring 8 kanals 8 marlas from Smt. Baljeet Kaur daughter of Moman vide sale deed no. 291/1 dated 01.06.2001 and land measuring 7 kanals 7 marlas from Raghbir son of Moman vide sale deed No. 318/1 dated 31.05.2001 (05.03.2002). As such he is a bonafide purchaser for consideration and is in possession of the said land. Prior to defendant no. 1, heirs of Moman were in possession of the suit land. As the defendant no. 1 is in Militray Services, therefore, he handed over possession of land measuring 70 kanals approximately to one Ramesh son of Ram Dia son of Chhaillu Ram on Theka @ Rs.32,000/-

per acre. Remaining averments made in the plaint were denied. Dismissal of the suit was prayed for. 5. Defendants No. 6 to 18 once appeared but later chose not to appear in the Court and they were proceeded against *ex parte*.

4. From the pleading of the parties, following issues were framed vide order dated 12.10.2012 :-

1. Whether the plaintiff is entitled to decree for permanent injunction as prayed for? OPP
2. Whether the plaintiff have suppressed true and material facts from the court? OPD
3. Whether the suit of the plaintiff is false and bogus? OPD
4. Whether the suit of the plaintiff is not maintainable? OPD
5. Relief.

5. Parties led oral as well as documentary evidence in support of their respective contentions.

6. After hearing arguments and after appreciating evidence on record, trial Court dismissed the suit of plaintiff vide judgment and decree dated 21.10.2015.

7. Aggrieved against the judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 13.09.2018.

8. Learned counsel for the appellants contended that the judgments and decrees passed by both the Courts below are based on surmises and conjectures. He further contended that both the Courts below have not appreciated the evidence led by the plaintiff-appellant

in right perspective. He further contended that Courts below have not

taken into consideration the fact that appellant is in possession of the land in dispute along with his co-sharers and have wrongly and illegally declined the relief of injunction.

9. I have heard learned counsel for the appellant and perused the record.

10. Plaintiff-appellant sought a relief of permanent injunction restraining defendants from interfering into his possession. Perusal of the revenue record shows that Dhan Singh and Baru sons of Biru Singh are in joint possession of land measuring 26 kanals 4 marlas. It is admitted fact that Dhan Singh and Baru have already been expired but the entries in jamabandies continue in their names. It is the pleaded case of the appellant that the land detailed in Para no. 1 of the plaint was in actual cultivating possession of Dhan Singh father of the plaintiff and Baru father of defendants no. 1 to 5 in equal share as owners. After the death of Dhan Singh, his share was inherited by plaintiff with consent of all heirs of Dhan Singh to the extent of half share and in possession of the same. After the death of Baru Ram his rights in the suit property was inherited by defendants no. 1 to 5 but possession continued with defendants no. 1 to 3. No partition has been effected between the LRs of Dhan Singh i.e. plaintiff and LRs of Baru i.e. defendants no. 1 to 3. They are in joint possession like their predecessors. Plaintiff-appellant has not claimed his possession over any exclusive part of the suit property rather he claimed that he is in joint possession of suit property to the extent of half share with defendants no. 1 to 3. He failed to produce evidence to show as to

which khasra numbers are in his possession. Thus relief of permanent injunction has rightly been rejected by the Courts below

11. Concurrent findings have been recorded by both the Courts below that plaintiff failed to prove his exclusive possession over any specific khasra number. 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.

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

13. Dismissed.

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

29.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No