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

RSA-817-1995 (O&M)**Reserved on : 18.07.2024****Date of Decision : 26.07.2024**

Brahamjit

....Appellant

VERSUS

Jagdev Singh @ Bagga and Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. M.S. Saini, Advocate for the appellant.

Mr. Tahaf Bains, Advocate for respondent No.3

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgement and decree stated 04.02.1993 passed by the Trial Court and the judgement and decree dated 07.03.1995 passed by the First Appellate Court.

2. Brief facts relevant to the present case are that the plaintiff-appellant herein claimed himself to be the owner in possession of the Taur as fully described in the plaint. It was the case set up by the plaintiff-appellant that he had purchased the property in dispute vide sale deed dated 05.10.1988 from one Swaran Singh. It was further the case set up in the plaint that Swaran Singh, who was previously the owner of the property in dispute, had made a wall on the Eastern side of the property in dispute and made foundations on the Southern side of the property in dispute and that the defendant-respondents had no right, title or interest with the said property in

dispute. However, they were threatening to raise construction over the property in dispute. Hence, the suit for permanent injunction was filed. The suit was contested by the defendant-respondents by filing their written statement stating that the plaintiff-appellant was neither the owner nor in possession of the Taur and that Swaran Singh was never the owner of the property in dispute and that the sale deed was only a paper transaction and actually the property in dispute vested in the Gram Panchayat. Replication was filed denying the contents of the written statement and reiterating those of the plaint.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled for the injunction prayed for ? OPP
2. Whether the suit is not maintainable ? OPD
3. Whether the plaintiff has got no locus standi to file the present suit ? OPD
4. Whether the Civil Court has got no jurisdiction to try the present suit ? OPD
5. Whether the plaintiff is owner in possession of the suit property ? OPP
6. Relief.

4. The Trial Court vide judgement and decree dated 04.02.1993 dismissed the suit holding that the Taur had been lying vacant for the last 10-11 years and that the plaintiff-appellant had failed to prove that he was in possession of the same. Aggrieved by the same, an appeal was preferred

which appeal was also dismissed by the First Appellate Court vide judgement and decree dated 07.03.1995. Hence, the present regular second appeal by the plaintiff-appellant.

5. Learned counsel for the plaintiff-appellant would contend that the plaintiff-appellant is the owner in possession of the Taur and that being in possession, he was entitled to the injunction as prayed for. It is further the contention of the learned counsel that sufficient documentary as well as oral evidence was produced by the plaintiff-appellant to prove his ownership and possession over the property in dispute. It is urged that both the Courts have erred in non-suiting the plaintiff-appellant.

6. *Per contra*, the learned counsel for respondent No.3 would contend that the only evidence produced by the plaintiff-appellant was the site plan (Ex.P2) on the basis of which the sale deed dated 05.10.1988 (Ex.P1) was alleged to have been executed. However, PW1 - Swaran Singh- who is the executor of the sale deed had himself stated that he had been residing in Jalandhar Cantt. for the last 18 years and that the property in dispute was lying vacant for the last 14 years. It was further admitted by him that the Gram Panchayat claimed that the property in dispute was owned by it.

7. I have heard the learned counsel for the parties.

8. In the present case the plaintiff-appellant had approached the Court claiming possession as well as ownership of the property in dispute. Both the Courts have concurrently held that the plaintiff-appellant failed to prove his ownership as well as his possession over the property in dispute. Swaran Singh, who is the executor of the sale deed (Ex.P1) had stepped into

the witness box as PW1 and had stated that he had been residing in Jalandhar Cantt. for the last 18 years and that the Taur was lying vacant for the last 14 years. He was also unable to state as to from whom the property in dispute was purchased by his father. Both the Courts have concurrently held that once Swaran Singh admitted that he was residing in Jalandhar Cantt. for the last 18 years and that the property in dispute was also lying vacant for the last 14 years, there was no question of delivery of physical possession to the plaintiff-appellant. Therefore, mere registration of the sale deed (Ex.P1) could not be relied upon to show that the possession had been passed to the plaintiff-appellant. It is trite that a person claiming title on the basis of a sale deed needs to prove the title of his vendor. The plaintiff-appellant has also failed to prove that Swaran Singh had a good title in the property in dispute. The plaintiff-appellant having led no cogent and convincing evidence to prove his possession on the property in dispute, his suit for permanent injunction has rightly been dismissed by both the Courts.

9. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The present appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

26.07.2024
Yogesh Sharma

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO