

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.2144 of 2023 (O&M)
Reserved on : 16.01.2024
Date of Decision : 23.01.2024

Jeet Singh ... Appellant

Versus

Tarsem @ Billu and Others ... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Daljit Singh Virk, Advocate for the appellant.

ALKA SARIN, J.

CM-7308-2023

1. For the reasons stated therein, the application for condonation of delay in refiling the appeal is allowed. Delay of 60 days in refiling the appeal is condoned.

RSA-2144-2023

2. The present regular second appeal has been preferred by the plaintiff-appellant against concurrent findings of both the Courts below whereby his suit has been dismissed.

3. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for permanent and mandatory injunction averring therein that the vacant plot of land, as fully detailed in the head note of the plaint and shown in red colour and marked as ABEFGIJP in the site plan, is situated in village Kalru, Tehsil Sultanpur Lodhi and it forms part of plot No.67 (area 10560 sq. feet) which was purchased by the father of the

plaintiff-appellant, Puran Singh, in an open auction vide Sale Certificate dated 01.08.1970. After the death of Puran Singh, the plaintiff-appellant and his brother Malkit Singh became co-sharers in the plot in dispute being the sons of Puran Singh. It was alleged that despite an interim order passed in favour of the plaintiff-appellant the defendant-respondents had forcibly and illegally interfered in the possession of the plaintiff-appellant and had made a “Chann” of dry sticks and placed fodder cutting machine and fastened their cattle over the suit property just to show their possession. A Report was lodged with the Police in this regard by the plaintiff-appellant and the defendant-respondents were requested to admit his claim over the suit property, but to no effect. Hence, the present suit. The defendant-respondent No.1 was proceeded against ex-parte while the defendant-respondent Nos.2 and 3 filed their written statement raising preliminary objections of maintainability, locus-standi, cause of action, estoppel and suppression of true and material facts from the Court. It was averred that a false story has been cooked up and written by the plaintiff-appellant and it was denied that they have forcibly and illegally made a “Chann” of dry sticks and placed a fodder cutting machine and fastened their cattle in the suit property. It was also denied that any order had been disobeyed by them. It was further averred that the defendant-respondent Nos.2 and 3 were using the suit property as haveli and had also grown vegetables in some vacant portion of suit property. The stand taken was that the plaintiff-appellant had filed the present suit on the basis of an alleged sale deed and alleged Sale Certificate only to grab the suit property by mentioning wrong boundaries and wrong area whereas the plaintiff-appellant was never in possession of the suit

property. The alleged sale deed and the alleged Sale Certificate have nothing to do with the suit property and the boundaries in the present suit do not match with the boundaries mentioned in the said alleged sale deed and the alleged Sale Certificate. On the basis of the pleadings, the following issues were framed :

- 1) Whether plaintiff is in settled possession of suit property ? OPP
- 2) Whether plaintiff is entitled to relief of perpetual injunction as claimed for ? OPP
- 3) Whether suit filed by plaintiff is maintainable ? OPP
- 4) Whether plaintiff has got locus-standi and cause of action to file the present suit ? OPP
- 5) Relief.

4. The parties led their evidence and on the basis of the pleadings and evidence, the Trial Court dismissed the suit of the plaintiff-appellant holding that the area of the site plans Ex.P3 and Ex.P1 did not match and as such the case of the plaintiff-appellant with regard to the suit property is not sustainable. The Trial Court also found that without identifying the total area and without specification of boundaries of the suit property, no legitimate inference can be drawn that the defendant-respondents had encroached upon the suit property during the pendency of the suit. As per the Trial Court the plaintiff-appellant had failed to prove the identity of suit property as well as the total area of the suit property. Aggrieved by the judgment and decree dated 25.09.2018, an appeal was preferred which also met with the same fate vide judgement and decree dated 03.01.2023. Hence, the present regular second appeal.

5. The learned counsel for the plaintiff-appellant has contended

that the impugned judgements and decrees are illegal and against the evidence available on the record. It is argued that the ownership and possession of the plaintiff-appellant over the suit property was established and the suit ought to have been decreed.

6. Heard learned counsel for the plaintiff-appellant and perused the paperbook.

7. In the present case the plaintiff-appellant has failed to establish his ownership or possession over the suit property. In the absence of his ownership and possession, the Courts below were justified in declining the relief of injunction to the plaintiff-appellant. Even before this Court the learned counsel for the plaintiff-appellant has been unable to point out to any evidence on the record to corroborate the averments made in the plaint or establish his ownership and possession over the suit property. That being so and in the absence of any evidence, the present appeal must necessarily fail.

8. In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises for determination in the present case. The present regular second appeal, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

23.01.2024
jk

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