

**RSA-4447-2019 (O&M)****1****109****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****RSA-4447-2019 (O&M)****Reserved on : 20.05.2024****Date of Decision : 31.05.2024**

Varinder Singh

....Appellant

Versus

Udesh Kumar

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ramesh Sharma, Advocate for the appellant.

ALKA SARIN, J.**CM-12540-C-2019**

For the reasons mentioned in the application, the delay of 29 days in refiling the appeal is condoned. CM stands disposed off.

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1. The present appeal has been preferred by the plaintiff-appellant challenging concurrent findings returned by both the Courts dismissing his suit for permanent injunction.
2. The brief facts relevant to the present case are that the plaintiff-appellant filed the present suit seeking a decree of permanent injunction for restraining the defendant-respondent from interfering in his peaceful possession over the suit land measuring 71 Kanal 05 Marla as well as Dhani (farm house) as depicted in red colour in the site plan. It was averred that as

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per the record of rights, the suit land is owned by the State of Punjab (Agrarian Department) and that the plaintiff-appellant had been coming in peaceful possession of the suit land as Gair Marusi in his own rights for the last 5 years without any hindrance or interruption from any quarter. The plaintiff-appellant along with one Lal Chand son of Prem Singh constructed their respective residential accommodations in Killa No.20 of Rectangle No.73 and the plaintiff-appellant also came in possession of his accommodation shown in red colour in the site plan and has sown wheat crop of Rabi 2014 over the suit land except the area under residence. The Khasra Girdawri entries were corrected in the name of the plaintiff-appellant and now the matter was pending before the Financial Commissioner but the entries were still recorded in the name of the plaintiff-appellant. There was an electricity connection in the name of the plaintiff-appellant installed in the farm house which also proved his possession. It was further averred that earlier the plaintiff-appellant had filed a civil suit for declaration which was dismissed as withdrawn being compromised between the parties. The defendant-respondent had no right, concern or connection either with the ownership or possession of the suit land including Dhani (farm house) but on the basis of previous illegal entries in the name of the defendant-respondent he had started threatening the plaintiff-appellant to disturb his possession over the suit land as well as the farm house and also tried to do so but his attempt was foiled with the timely intervention of respectables. The defendant-respondent was repeatedly asked to admit the claim and title of the plaintiff-appellant being in cultivating possession of the suit land and to

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abstain from doing so but to no effect. Hence, this suit. In the written statement the defendant-respondent stated that the plaintiff-appellant had concealed the true facts because he had earlier filed a civil suit [CS No.199-1/17.07.2009] titled as “Varinder Singh Vs. Umesh Kumar & Anr.” for permanent injunction restraining the defendant-respondent herein and his brother from interfering in his possession over the suit land which civil suit was dismissed vide judgment and decree on 06.06.2011 by the Trial Court and the same attained finality because the plaintiff-appellant did not challenge the said decision and therefore the present suit was barred by law. It was also submitted that the order of correction of Khasra Girdawri had been set aside by the Financial Commissioner vide order dated 11.02.2014 and that the suit had been filed to get the land allotted by the Agrarian authorities and further the plaintiff-appellant had not stated the capacity of his alleged possession or the status of his alleged cultivation with oblique motive and neither had he submitted as to how and when he entered the suit land. The suit land was owned by one Som Lal Setia and the defendant-respondent started cultivating the same as a tenant under him since the last more than 40 years and that the defendant-respondent had employed the plaintiff-appellant as Siri (Farm Labour) to assist him in cultivation of the suit land. It was stated that a Gair Marusi has no legal status or justifiable right in the suit land and the existence of an electric connection in the name of the plaintiff-appellant did not establish his lawful possession. No replication was filed by the plaintiff-appellant.

3. On the basis of the pleadings of the parties the following issues

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were framed :

1. Whether plaintiff is entitled to the perpetual injunction as prayed for ? OPP
2. Whether the suit is not maintainable in the present form ? OPD
3. Whether plaintiff is estopped by his own act and conduct from filing the present suit ? OPD
4. Whether the plaintiff has concealed the material and patent facts from the court ? OPD
5. Relief.

4. The Trial Court vide judgment and decree dated 19.12.2017 dismissed the suit of the plaintiff-appellant. Aggrieved by the same, an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 07.01.2019. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant would contend that both the Courts have erred in dismissing his suit for perpetual injunction. It is argued that the possession of the plaintiff-appellant stood proved on the record and therefore his possession ought to have been protected.

6. I have heard the learned counsel for the plaintiff-appellant.

7. In the present case the plaintiff-appellant based his claim of possession over the suit land on the basis of entries in the Khasra Girdawaris which were corrected on the basis of order dated 20.02.2009 passed by the Assistant Collector 1st Grade, Fazilka. Admittedly, the said order no longer

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survives as the revision petition was accepted by the Financial Commissioner on 11.02.2014. There is no other documentary evidence available on the record from where it can be held that the plaintiff-appellant is in possession of the suit land. No doubt some of his witnesses have orally deposed in his support but for establishing possession mere oral deposition is not sufficient. The First Appellate Court held that *“So, appellant claimed the possession of the suit property on the basis of khasra girdawari corrected on the basis of order dated 20.02.2009 and order dated 20.02.2009 is already set aside vide Ex.D44. When order dated 20.02.2009 is already set aside, then appellant can not claim possession on the basis of khasra girdawari Ex.P2 and Ex.P3 corrected on the basis of order dated 20.02.2009”*. It was further held that *“So from the perusal of above said discussion, it is clear that appellant had claimed the possession of the suit property, but appellant failed to prove his possession over the suit property. So, when appellant failed to prove his possession over suit property, then learned lower court rightly dismissed the suit of the appellant. So findings of the learned lower court on issue No.1 are based on the pleadings of the parties as well as evidence available on record, so same are affirmed”*. Learned counsel for the plaintiff-appellant has not been able to point to any cogent evidence on the record to establish his actual physical possession over the suit land. The judgments and decrees passed by both the Courts therefore deserve to be upheld. No other point was argued.

8. In view of the above, the impugned judgments and decrees suffer from no illegality. The suit of the plaintiff-appellant has rightly been dis-



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missed. The present appeal is without merits and the same is dismissed.
Pending applications, if any, also stand disposed off.

31.05.2024
Ankur

(ALKA SARIN)
JUDGE

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