

**RSA No.1602-2021****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.****Sr. No.113****Case No. : RSA No.1602 of 2021****Date of Decision : 18.04.2024**

Sewa Singh

.... Appellant

vs.

Madan lal and Anr

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Amarpreet Singh, Advocate
for the appellant.

* * *

GURBIR SINGH, J. :

1. This present regular second appeal has been preferred by the defendant/appellant- Sewa Singh against the judgment and decree dated 14.09.2017 passed by learned Civil Judge, Junior Division, Bathinda herein after referred to as trial Court and also against the judgment dated 19.02.2021 passed by learned Additional District Judge, Bathinda herein after referred to as Lower Appellate Court.

2. Parties hereinafter referred as per the original status in the suit.

3. Plainitff- Madan Lal filed suit for permanent injunction restraining the defendant- Sewa Singh and another from interfering in his peaceful possession and from taking illegal and forcible possession of the plot, as mentioned in the head note of the plaint. It was submitted in the suit that father of the plaintiff namely Ram Kumar was owner in possession of the plot in question which was purchased by him vide sale deed dated



26.04.1983. He remained in peaceful possession of that plot till his death. He died on 01.10.2001 leaving behind two sons and three daughters and mutation No. 64776 has already been sanctioned. So the plaintiff became absolute owner of the plot in question along with his brothers and sisters. The houses of defendants are situated on both sides of plot of the plaintiff and they intended to grab the plot of the plaintiff by alleging the same to be a public street. With this mutation, they filed a civil suit against the plaintiff alleging the plot to be a public street. But the plaintiff had already raised construction in the said plot and also fitted an iron gate in front wall of the plot. The defendants tried to demolish the walls constructed by the plaintiff and also threatened to take illegal and forcible possession. Faced with situation, the plaintiff preferred the present suit.

4. The defendants contested the suit by filing written statement, inter-alia submitting therein that originally one Amarjit Kaur was owner of the plot in question and sold the same to Sewa Singh (defendant/appellant) vide sale deed dated 15.11.1996 and possession of same was handed over to him. Similarly, Khetu Ram was owner of plot measuring 202-2/9 square yards and he through his power of attorney Ashwani Kumar sold the said plot to Kartar Singh vide sale deed dated 7.10.1976. Said plot of Kartar Singh abutted plot of defendant No.1. Plot of Kartar Singh was not abutting main street and that is why, a family settlement had taken place between the defendant No.1 and Kartar Singh. In family settlement, the defendant No.1 got plot underneath his house abutting main street as well as abutting street 15' wide and Kartar Singh got adjoining plot abutting only main street.

Khetu Ram was also owner of land measuring 200 square yards and he

**RSA No.1602-2021****-3-**

through his attorney Ashwani Kumar vide sale deed no.5541 dated 12.2.1975 sold the same with specific boundaries to Nirmala Devi and Nirmala Devi vide sale deed no.4091 dated 10.9.1999 sold the said plot to defendant no.2 and Gurdev Kaur and possession was delivered to them. The defendant No.2 and Gurdev Kaur constructed house on said plot in the year 2000-01. Then, Sewa Singh got sanctioned site plan from Municipal Council, Bathinda for construction of house on his plot and thereafter raised construction on said plot. There are streets on two sides of house of defendant No.1 and doors, window, ventilators and drain pipes of house of defendant No.1 open in 15' wide street running between houses of defendants. The property in question is 15' wide street and do not belong to Ram Kumar or the plaintiff. No MC number has been allotted to plot in question as same is a street.

5. From the pleadings of the parties following issues were framed:-

1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
2. Whether the plaintiff has no locus standi and cause of action to file the suit? OPD
3. Whether the suit is not maintainable? OPD
4. Whether the plaintiff is estopped from filing the suit by his act and conduct? OPD
5. Whether the plaintiff has not approached the Court with clean hands. If so its affect? OPD
6. Relief.

6. After hearing the learned counsel for the parties and appreciating the evidence on record, the suit of the plaintiff was decreed and defendants



were restrained from interfering in the peaceful possession of the plaintiff and from taking illegal and forcible possession of the suit property and also from demolishing the construction raised by the plaintiff over the suit property.

7. Aggrieved against the said judgment and decree, defendants-Sewa Singh filed appeal before the Lower Appellate Court which was also dismissed by the learned Additional District Judge, Bathinda, observing therein that the findings of learned trial Court neither suffered from any illegality nor warranted any interference.

8. Learned counsel for the appellant has contended that findings of both the Courts below are based upon misreading and mis-appreciation of evidence thereby causing great prejudice to the appellant. It has further been contended that demarcation of the plot in question was conducted but the same was not produced in evidence, thereby drawing adverse influence against the plaintiff because the property cannot be identified without demarcation. It is further contended by the learned counsel for the appellant that the Court below has wrongly held that the plaintiff was only to prove his possession and not ownership on the plot in question.

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

10. The present one is suit for permanent injunction for restraining the defendants from interfering in the peaceful possession of the plaintiff or taking forcible possession of the plot in question. Prior to the present suit, defendants-Sewa Singh and Mohinder Singh filed a suit against the plaintiff which was dismissed and findings was recorded that Madan Lal was in



possession of the suit property. In the present case also both the parties have admitted about the possession of Madan Lal over the plot since it is the suit for permanent injunction to protect the established possession so there is no requirement to prove ownership of the plot. The Court has to see as to who is in the established possession of the plot on the date of filing of the suit. It is admitted fact that in the previous suit as well as in the present suit, Madan Lal is proved to be in possession of the plot, as per oral and documentary evidence brought on record. It is also apt to mention that after passing of decree in the previous suit, the appeal against the said judgment filed by the defendants, was also dismissed. The issue regarding possession is already decided in previous suit so same could not be reopened in this suit.

11. In view of the above discussion, this Court is of the view that judgments recorded by both the Courts below did not suffer from any perversity, infirmity or illegality. No question of law, much less substantial question of law, arises in the present appeal.

12. The present appeal is without any merit and the same is hereby dismissed.

18.04.2024
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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.