



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

**RSA No.2323 of 2022 (O&M)
Date of Decision : 22.10.2024**

Nazar Singh

.....Appellant

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Puneet Jindal, Senior Advocate with
Mr. Arshnoor Singh, Advocate
for the appellant.

Mr. Solomon Partap Singh, AAG, Punjab
for respondents No.1 to 3.

Mr. Dheeraj Mahajan, Advocate
for respondent No.4.

PANKAJ JAIN, J. (ORAL)

Plaintiff is in second appeal.

2. For convenience and to avoid confusion, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the plaintiff and the respondents as the defendants.

3. Plaintiff filed suit seeking declaration to the effect that he is owner in possession of the suit land as detailed-out in the headnote of the plaint admeasuring 55 Kanals, 3 Marlas. It was further claimed that auction held on 26.06.1998 by defendants No.1 to 3 in favour of defendant No.4 regarding suit land was illegal, null and void. Further challenge is to the

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order dated 24.08.1998 whereby sale auction in favour of defendant No.4 stands affirmed. Plaintiff further sought relief of permanent injunction seeking restrain against defendants No.1 to 3 from dispossessing him from the suit land.

4. Plaintiff claimed that his grandfather came in cultivating possession of the suit land. The land was *banjar* and low lying. His grandfather made it fit for cultivation and constructed a house in part of the land. Since then the plaintiff is residing in the said house. His grandfather died in the year 1960 when plaintiff came in possession of the suit land and is cultivating the same since then. Defendants No.1 to 3 without having any right, title or interest over the suit land, auctioned the same on 26.06.1998. Land was auctioned in favour of defendant No.4 and was confirmed vide order dated 24.08.1998. The auction and all proceedings being without any notice to the plaintiff, are bad in law.

5. Defendants No.1 to 3 filed joint written statement claiming that the suit land was sold in open auction on 26.06.1998. 41 persons participated and bided. Suit land was sold in favour of defendant No.4 being the highest bidder for a consideration of Rs.29,00,000/-. After the highest bidder deposited the amount in terms of the auction, ejectment proceedings were initiated against brother of the plaintiff and his father Gurbachan Singh. The same was allowed by Collector, Gurdaspur vide order dated 11.02.2006. Possessee i.e. father and brother of the plaintiff

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were directed to hand-over possession of the land with immediate effect. The eviction order was maintained by the Appellate Court. The plaintiff is neither in possession nor is tenant in the suit land and has no right, title or interest to maintain the present suit.

6. Defendant No.4 filed separate written statement bringing on record that father of the plaintiff filed suit for permanent injunction against defendants No.1 to 3 in respect of the same land. The same was dismissed vide judgment and decree dated 03.12.2014 passed by Civil Judge (Junior Division), Gurdaspur. Appeal preferred against the same, was also dismissed vide judgment and decree dated 03.02.2007. The instant suit is nothing but an attempt on part of the plaintiff to re-agitate the claim which his father as well as brother lost in the earlier round of litigation. It was further claimed that the suit land was purchased by defendant No.4 in open auction. Father of the plaintiff also participated in the same and was present at the time of auction. Thus, defendant No.4 having validly purchased the suit property, instant suit is nothing but an abuse of process of law.

7. On the basis of the pleadings of the parties, followings issues were framed :

- “1. Whether the plaintiff is entitled to decree of declaration on the basis of facts as alleged ? OPP
2. Whether plaintiff is entitled to decree of permanent injunction on the basis of facts as alleged? OPP
3. Whether suit is within limitation? OPP
4. Whether suit is not maintainable? OPD

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5. Whether no cause of action accrued to file the present suit?
OPD
6. Whether no notice u/s 80 CPC was served before institution
of present suit? OPD
7. Whether plaintiff has no locus standi to file the present suit
against defendants? OPD
8. Whether suit is barred by principle of rejudicata? OPD
9. Whether the suit is barred u/o 2 Rule 2 CPC? OPD
10. Whether plaintiff has concealed material facts from the
Court, if so, its effect? OPD
11. Relief.”

8. Court of First Instance answered issue No.1 in favour of the defendants and against plaintiff holding that in the earlier round, the auction proceedings challenged in the present suit have already been held to be valid and legal. Grandfather as well as father of the plaintiff stand ejected in the ejectment proceedings initiated by defendants No.1 to 3. The orders passed in ejectment proceedings have attained finality.

9. Issues No.2, 4, 5, 7 and 10 were decided in favour of the defendants and against the plaintiff. Suit filed by the plaintiff was ordered to be dismissed.

10. The aforesaid findings stand affirmed by the Lower Appellate Court.

11. Lower Appellate Court dismissed the appeal filed by the plaintiff holding that the instant suit at the behest of the plaintiff is hopeless and is without any substance and is nothing but a failed attempt to dislodge the rightful claim of a rightful owner of the property in question.

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12. Senior Counsel appearing for the appellant submits that the findings have been recorded by the Trial Court that the plaintiff is in possession of the suit land after constructing his house. He is in possession over the suit property for more than 50 years. Thus, his possession being a settled possession needs to be protected.

13. Per contra, counsel for respondent No.4 submits that time and again the plaintiff is trying to re-agitate the dispute which already stands finally settled in the earlier round of litigation initiated at the behest of father and brother of the plaintiff. He submits that possession already stands delivered to respondent No.4. The present suit is nothing but an abuse of process of law which deserves to be dismissed with exemplary costs.

14. I have heard counsel for the parties and have gone through records of the case.

15. Ld. Senior Counsel is not in position to dispute the fact that *qua* the same property father of the plaintiff Gurbachan Singh filed Civil Suit No.180/30.04.1998 seeking decree of permanent injunction *qua* the land in dispute. The Civil Suit was dismissed vide judgment and decree dated 03.12.2004. It has further come on record that father and brother of the plaintiff already stand ordered to be ejected vide order dated 11.05.2006 passed by Collector, Exhibit D-4. The same stands affirmed vide order dated 29.08.2006, Exhibit D-5. Again, suit was filed by brother of the plaintiff on 17.05.2007. The said Civil Suit No.105 of 2007 was dismissed

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on merits vide judgment and decree dated 08.12.2010, Exhibit D-1. The aforesaid judgment and decree was affirmed in Civil Appeal, vide Exhibit D-2, dated 19.03.2013. Not only this, during the pendency of the present appeal, possession of the property in dispute was taken by State on 26.10.2022. It is a case wherein a lessee, who already stands evicted and the land having been auctioned where he himself participated, is trying hard to abuse the process of law to defeat the rightss of a rightful owner. Despite the auction having been conducted in the year 1998 and the same having been confirmed, plaintiff and his family are hell-bent to defeat the rights of a rightful owner by abusing the process of law.

16. In view of above, finding no merit in the instant regular second appeal, the same is ordered to be dismissed with costs though-out.

17. Pending application(s), if any, shall also stand disposed off.

October 22, 2024

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No