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

RSA-5514-2017 (O&M)

Reserved on : 25.07.2024

Date of Decision : 21.08.2024

Prem Chand

....Appellant

VERSUS

Rattan Singh & Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant No.3-appellant challenging the concurrent findings returned by the Trial Court and the First Appellate Court vide judgments and decrees dated 10.10.2013 and 19.05.2017 respectively.
2. The brief facts relevant to the present case are that the plaintiff-respondent no.1 filed a suit for possession and mesne profits qua land measuring 09 Bighas 04 Biswas comprised in Khewat No.2805, Khatoni No.4503, Khasra No.207/2/2 (5 Bighas 04 Biswas), Khasra No.13302/208 (4 Bighas 00 Biswa) situated in the revenue estate of Kasba Karnal, Tehsil and District Karnal. It was averred by the plaintiff-respondent no.1 that he is owner of the suit land and the present defendant-respondent nos.2 and 3 herein were his tenants but had stopped giving 1/3rd of the crop produce of the suit land. The present defendant-respondent nos.2 and 3 herein became

dishonest and in order to harass the plaintiff-respondent no.1 and to grab the suit land, they filed Civil Suit No.20 of 2011 titled as 'Telu Ram etc.vs. Prem Chand' claiming that they had become owners of the suit land by way of adverse possession and in that suit they arrived at a collusive compromise by stating that the present defendant no.3-appellant had paid Rs.8,00,000/- and the possession of the suit land had been surrendered to him. The said suit was ultimately withdrawn by the present defendant-respondent nos.2 and 3 herein. The plaintiff-respondent no.1 filed the present suit for possession against the defendants with a direction to the defendant no.3-appellant to deliver possession of the suit land. The suit was resisted by the defendants. In his written statement the defendant no.3-appellant took preliminary objections regarding locus-standi, cause of action, not coming to court with clean hands and suppression of true and material facts. It was denied that the plaintiff-respondent no.1 was owner or in possession of the suit land. It was stated that the plaintiff-respondent no.1 was owner of 04 Bighas of land out of Rect. No.13302, Killa No.208 and also owner of 11 Bighas 9 Biswas of land of killa No.207. The Killa No.208 was acquired for construction of a Canal and remaining land of Killa No.207 had been divided into three parts and out of this killa number 2 Bighas 05 Biswas had been transferred by the plaintiff-respondent no.1 to Shri Gurdwara Bai Lalu Jee vide registered sale-deed No.3988 dated 9.2.1970 and out of the remaining 9 Bighas 4 Biswas of land, 4 Bighas of land had been sold to Karan Singh etc. vide sale-deed dated 27.2.1989. The remaining land out of 5 Bighas 4 Biswas had been acquired by the Canal Department for the construction of a Canal and therefore the plaintiff-respondent no.1 had no

land in his hands and the suit was not maintainable. In the replication the contents of the written statement were denied and those of the plaint were reiterated.

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

1. Whether the plaintiff is entitled to a decree for for possession as alleged in the plaint ? OPP
2. Whether the suit is not maintainable in the present form ? OPD
3. Whether the plaintiff has no locus-standi to file the present suit ? OPD
4. Whether the suit of the plaintiff is not properly valued for the purposes of court fee and jurisdiction ? OPD
5. Whether the plaintiff has not come to the court with clean hands and has suppressed true and material facts from the court ? OPD
6. Whether the plaintiff has no cause of action ? OPD
7. Relief.

4. The Trial Court vide judgment and decree dated 10.10.2013 decreed the suit for possession. Aggrieved by the same, an appeal was preferred by the defendant no.3-appellant which appeal was also dismissed vide judgment and decree dated 19.05.2017. Hence, the present regular second appeal.

5. Learned counsel for the defendant no.3-appellant would contend that both the Courts have erred in decreeing the suit of the plaintiff-respondent no.1. It is submitted that the plaintiff-respondent no.1 had sold parts of the suit land and some parts were compulsorily acquired for construction of a canal and therefore the plaintiff-respondent no.1 was not the owner or in possession of the suit land and the suit itself was not maintainable.

6. I have heard the learned counsel for the defendant no.3-appellant.

7. In the present case both the Courts have decreed the suit of the plaintiff-respondent no.1. The defendant no.3-appellant could not successfully prove that the suit land had been acquired for construction of a canal. The First Appellate Court found that *“The main submission of the learned counsel for the appellant-defendant No.3 is that the land in issue has been acquired by the Land Acquisition Collector as is evident from the copy of Field Book Ex.D4 and the copy of the site plan Ex.D5 and therefore the plaintiff Rattan Singh has no title with him regarding the disputed land and that the presumption of truth which is attached to the revenue record, has been rebutted by the appellant-defendant No.3 and therefore the suit of the plaintiff-respondent is not maintainable and is liable to be dismissed on this ground. This submission of the learned counsel for the appellant-defendant No.3 is misconceived and is to be rejected outrightly because firstly the appellant-defendant No.3 has not proved the documents Ex.D4 and Ex.D5 according to law and further the revenue record placed on the file by the parties does not at all show that the land in issue has been*

acquired in the land acquisition”. It was further held that “ ... in the instant case, he has come with the plea that the suit land has been acquired by the Canal Department and therefore, the plaintiff-respondent No.1 has no title over the suit land whereas in the earlier suit, he compromised the matter with the respondents No.2 and 3 and admitted that he had taken the possession of the suit land from respondents No.2 and 3. Therefore, this court is unable to understand how the land which was stated to be acquired for the purpose of canal can be taken into possession by the appellant-defendant No.3”. Learned counsel for the defendant no.3-appellants is unable to point to any cogent and reliable evidence on the record to corroborate the arguments raised. In the absence of such reliable evidence, the findings recorded by both the Courts cannot be faulted. No other point was argued.

8. In view of the above, no mistake or error of law or facts can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

21.08.2024
Ankur

(ALKA SARIN)
JUDGE

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