

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****115****RSA-1087-2021 (O&M)****Date of Decision : 30.09.2024**

Miya Singh

....Appellant

VERSUS

Dalbir Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sandeep Goyat, Advocate for the appellant.

ALKA SARIN, J. (Oral)**CM-4796-C-2021**

1. This is an application for condonation of delay of 185 days in re-filing the present appeal.

2. For the reasons stated in the application, the same is allowed.

The delay of 185 days in re-filing the present appeal is condoned.

CM-4797-C-2021

3. This is an application for condonation of delay of 28 days in filing the present appeal.

4. For the reasons stated in the application, the same is allowed.

The delay of 28 days in filing the present appeal is condoned.

RSA-1087-2021 (O&M)

5. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 25.09.2018 passed by the Trial Court and the judgment and decree dated 19.07.2019 passed by the First Appellate Court.

6. The brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed a suit for permanent injunction as well as for prohibitory and mandatory injunction averring in the plaint that he is absolute owner in possession of the *gair mumkin* plot bearing Khasra No.135//24/2 (0K-3M) comprised in Khewat No.4584 Khata No.1108 situated in village Samain, Tehsil Tohana, District Fatehabad vide Anudan Patar dated 24.09.1982 and on the basis of said Anudan Patar a mutation was sanctioned in the name of the plaintiff-appellant vide mutation No.2127 dated 05.10.1982 in the revenue record and that the defendant No.2 in collusion with defendant No.1-respondent got a wrong demarcation report dated 16.10.2015 and further with consequential relief of permanent injunction restraining the defendants from interfering in his peaceful possession. It was averred by the plaintiff-appellant that he is owner of the *gair mumkin* plot. On 09.01.2002 the plaintiff-appellant gave an application to defendant No.2 for demarcating the plot in question. On the basis of said application the demarcation report was prepared on 03.06.2002 in the presence of witnesses and thereafter the plaintiff-appellant filled up the soil in the plot in question and raised the boundary wall. The defendant No.1-respondent purchased the plot No.135//24/10 (0K-3M) Khewat No.1104 Khatauni No.1762 situated in village Samain and the backside of the boundary wall of the said plot touches the plot of the plaintiff-appellant. It was further averred that the defendant No.1-respondent constructed a residential house on the said plot and that in order to grab the plot of the plaintiff-appellant the defendant No.1-respondent and his family members

came to the plot in question and tried to take possession of the same. When the plaintiff-appellant and his sister raised an objection, they were beaten mercilessly. It was further the case that the defendants got a false FIR registered against them. The challenge was also laid to the demarcation report. The defendant No.1-respondent put in appearance and took the stand that the plaintiff-appellant was a quarrelsome person and it was denied that the plaintiff-appellant is the absolute owner in possession of *gair mumkin* plot bearing Khasra No.135//24/2 (3-0) Khewat No.4584 Khata No.1108 vide Anudan Patar dated 24.09.982 and further that the alleged mutation No.1584 dated 05.10.1982 is also wrong, null and void. It was the stand taken that defendant No.1-respondent was the lawful owner in possession of *gair mumkin* plot comprised in Khasra No.135//24/2 (0-3) Khewat No.1104 Khatauni No.1762 situated in village Samain. Defendant Nos.2 and 3 also filed their separate written statement. Replication was filed. On the basis of pleadings the following issues were framed :

1. Whether the plaintiff is entitled for a decree of injunction on the grounds mentioned in the plaint ? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
3. Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD
4. Whether the plaintiff has concealed the true and material facts from the Court ? OPD

5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit ? OPD
6. Whether the suit of the plaintiff is bad on account of mis-joinder and non-joinder of necessary parties ? OPD
7. Whether the suit of the plaintiff is time barred by the principle of re judicata ? OPD
8. Whether this Court has no jurisdiction to try and entertain the present suit ? OPD
9. Whether the suit of the plaintiff is bad for want of notice under Section 80 CPC ? OPD
10. Relief.

7. The Trial Court dismissed the suit vide judgment and decree dated 25.09.2018. Aggrieved by the same an appeal was preferred which appeal was also dismissed vide judgment and decree dated 19.07.2019. Hence, the present regular second appeal.

8. Learned counsel for the plaintiff-appellant would contend that the Courts have erred in dismissing his suit. It is urged that an FIR was registered and that it was clear from the registration of the FIR that there was a dispute qua the suit land.

9. Heard.

10. In the present case both the Courts have concurrently held that the plaintiff-appellant had been unable to establish that defendant No.1-respondent was trying to interfere in the peaceful possession of the plaintiff-

appellant. Learned counsel for the plaintiff-appellant has been unable to point out to any evidence led by the plaintiff-appellant in support of his claim that the defendant No.1-respondent was interfering in his possession. Rather, it has candidly been admitted that there was no evidence except for the fact that an FIR had been lodged. In view thereof, no fault can be found with the judgments and decrees passed by both the Courts.

11. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

30.09.2024
jk

(ALKA SARIN)
JUDGE

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