

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****109****RSA-60-2019 (O&M)****Reserved on : 17.09.2024****Date of Decision : 15.10.2024**

Jaswinder Singh

....Appellant

VERSUS

Mulsha Singh through his LRs and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sidharth Maini, Advocate for
Mr. I.P.S. Kohli, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant-appellant challenging the judgment and decree dated 19.05.2017 passed by the Trial Court and the judgment and decree dated 26.04.2018 passed by the First Appellate Court whereby the suit for possession filed by the plaintiff-respondents stands decreed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondents filed a suit for possession of land bearing Khewat Khatauni No.533/770, Khasra No.76//15/8-0 vide Jamabandi for the year 2011-12 situated in village Kamalpur, Tehsil Sultanpur Lodhi, District Kapurthala. It was averred in the plaint that the suit land was allotted to plaintiff No.1 – Mulsha Singh – and his brother Dalip Singh in equal shares by the State of Punjab under the Utilization of Surplus Area Scheme and after a long-drawn litigation with the Government a certificate of transfer of suit land was issued in their favour on 17.10.2003. This was after the suit filed by the

plaintiff-respondents against the State of Punjab was decreed and the appeal filed by the State of Punjab was dismissed vide judgment and decree dated 18.01.2000. It was further averred that the defendant-appellant had no concern with the suit land and taking undue advantage of the litigation he had taken forcible possession from Rabi 2004. The defendant-appellant had also filed a suit for injunction against the plaintiff - Mulkha Singh - and his brother Dalip Singh titled 'Jaswinder Singh vs. Dalip Singh and Others' which suit was dismissed on 22.11.2007. His appeal was also dismissed vide judgment dated 21.10.2008 and the regular second appeal was dismissed by this Court on 10.02.2010. Hence, the suit for possession. The defendant-appellant appeared and filed his written statement denying the averments made in the plaint. It was submitted that the defendant-appellant came into possession of the suit land forcibly on 25.04.1974. However, later the plaintiff-respondents started claiming themselves to be owners on the basis of some allotment made in their favour. The defendant-appellant also set-up an agreement to sell dated 06.03.1980 in his favour and contended that the plaintiff-respondents had agreed to sell the suit land to him and had received Rs.2,000/- as earnest money and 15 Maghar 2037 BK was fixed for execution and registration of the sale deed. It was submitted that although possession of the suit land was already in his favour, however, inadvertently it was mentioned in the agreement that possession would be handed over at the time of execution of the sale deed. It was further the case set up that the defendant-appellant was always ready and willing to get the sale deed executed. Further, the plea of adverse possession was raised that he was in open, peaceful, continuous, uninterrupted and adverse possession since 25.04.1974 and had also constructed a house. Replication was filed

reiterating the contents of the plaint and denying those of the written statement.

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

1. Whether the plaintiff is entitled to the relief of possession as prayed for ? OPP
2. Whether the suit is not maintainable in the present form ? OPD
3. Whether the plaintiff has no locus standi or cause of action to file the present suit ? OPD
4. Whether the plaintiff has concealed the material facts from the court, if so, its effect ? OPD
5. Whether the plaintiff has not come to court with clean hand, if so, its effect ? OPD
6. Whether the plaintiff is estopped by his own act and conduct from filing the present suit ? OPD
7. Whether the suit is time barred ? OPD
8. Whether the suit is not properly valued for the purpose of court fee and jurisdiction ? OPD
9. Relief.

4. The Trial Court vide judgement and decree dated 19.05.2017 decreed the suit of the plaintiff-respondents. The defendant-appellant challenged the findings of the Trial Court by filing an appeal. However, vide judgement and decree dated 26.04.2018 the said appeal was dismissed by the First Appellate Court. Hence, the present regular second appeal.

5. The learned counsel for the defendant-appellant contended that both the Courts have erred in decreeing the suit of the plaintiff-respondents. It is urged that the defendant-appellant has been in possession of the suit land since 25.04.1974 and that there is also an agreement to sell dated 06.03.1980 in his favour. According to counsel the defendant-appellant had become owner by adverse possession.

6. I have heard counsel for the defendant-appellant.

7. Both the Courts have concurrently found that the plaintiff-respondents are allottees of the suit land from the State of Punjab and possession was also handed over to them. The allotment order is Ex.P1, the allotment slips and Ex.P2 and Ex.P3 and the entry in the rapat roznamcha regarding delivery of possession to them is Ex.P4. The ownership of the plaintiff-respondents over the suit land stands established. Regarding the plea of adverse possession raised by the defendant-appellant it is to be noticed that in the suit for injunction filed by the defendant-appellant he had raised this plea of adverse possession. However, this stand was not accepted by the Trial Court (Ex.P7), the First Appellate Court (Ex.P9) and this Court (Ex.P11) in the regular second appeal filed by the defendant-appellant. The defendant-appellant cannot now raise the same plea and issue again in the present suit. The agreement to sell set-up by the defendant-appellant has also been discarded by both the Courts. It has been found inter-alia that the agreement to sell is dated 06.03.1980, it is unregistered, and the date fixed for execution and registration of the sale deed was mentioned as 15 Maghar 2037 BK and not any date, month and year of the English Calendar. Further, no evidence was led by the defendant-appellant to prove as to why no suit for specific performance was ever filed by him against the plaintiff-

respondents. The plaintiff-respondents are seeking possession of the suit land in accordance with law. No fault can be found with the judgments and decrees passed by both the Courts. No other point was argued.

8. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

15.10.2024
jk

**(ALKA SARIN)
JUDGE**

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