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

RSA-987-2021 (O&M)

Date of Decision : 15.01.2025

Ram Sarup

... Appellant(s)

Versus

Ved Parkash & Anr

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rose Gupta, Advocate and
Ms. Yashika Walia, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 14.03.2017 passed by the Trial Court dismissing his suit and the judgment and decree dated 26.03.2021 passed by the First Appellate Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant preferred a suit for injunction averring in the plaint that initially Gugan son of Heta, father of the defendant-respondents, was a co-sharer in land measuring 131 kanals comprised in Khasra Nos.344//24/2(0-13), 386//2(8-0), 3(8-0), 4(8-0), 5(7-0), 6(7-0), 8(8-0), 9(8-0), 387//1(8-0), 2(8-0), 3(7-8), 6(7-8), 7(8-0), 8(8-0), 9(8-0), 10(8-0), 15/1(2-9) and Khasra No.388//10/2(2-8) situated at Village Barwala vide Civil Court decree dated 29.03.1984. It was further the case set up that on 31.03.1987 Gugan son of Heta executed and got registered a lease deed in respect of land measuring 8 kanals 15 marlas in favour of the father of the plaintiff-appellant and actual physical possession of Khasra Nos.387//1(8-0) and 386//9(0-15) was given

to the father of the plaintiff-appellant and since then he was in actual physical possession of the said khasra numbers. It was further the case that the father of the plaintiff-appellant – Ram Baksh – died on 10.11.1992 and since then the plaintiff-appellant was in actual physical possession of the said khasra numbers. It was further the case that similarly Jeeta son of Heta executed and got registered a lease deed No.1104 dated 21.05.1984 in respect of land measuring 8 kanals 15 marlas which was 1/5th share of land measuring 131 kanals in favour of Ram Baksh and physical possession of Khasra No.386//3 (7-8) was also delivered to Ram Baksh on 21.05.1984 and since then Ram Baksh was in possession. It was further the case that Gudan had sold the land measuring 8 kanals 15 marlas in Khasra Nos.387//1 (8-0) and 386//9 (0-15) to Ram Baksh on 31.03.1987 and he had received the entire sale consideration from his father on 31.03.1987 and had given a GPA No.1198 dated 31.03.1987 in favour of his father. Similarly, Jeeta had also sold the land measuring 9 kanals vide agreement to sell dated 30.06.1983 whereby he had agreed to sell the land for a sum of ₹20,000/- and received ₹10,000/- as earnest money. Later he received the entire sale consideration and executed a GPA dated 21.05.1984 and lease dated 21.05.1984. It was further the case that due to the untimely death of the father of the plaintiff-appellant, mutations could not be recorded. It was further averred in the plaint that the defendant-respondents were now forcibly trying to dispossess the plaintiff-appellant. On notice a joint written statement was filed raising various pleas regarding cause of action, locus standi, maintainability, concealment of facts. On merits, it was denied that Gudan son of Heta

(father of the defendant-respondents) executed a registered lease deed dated 31.03.1987 in respect of land measuring 8 kanals 15 marlas. It was stated that the recital was false and baseless and that the lease deed was illegal, null, void and based on fraud and misrepresentation. It was further stated that Ram Baksh was a confidant of the father of the defendant-respondents and the GPA was given to Ram Baksh while Gugan went to Court/Tehsil premises. Ram Baksh being a clever and cunning person got executed a registered lease deed in collusion with the witnesses. Replication was not filed. On the basis of the pleadings, the following issues were framed :

1. Whether the plaintiff is entitled for relief of permanent injunction (prohibitory & Mandatory) as prayed for ? OPP
2. Whether the suit of plaintiff is liable to be dismissed being false and frivolous ? OPD
3. Whether the Lease Deed dated 31.3.1987 allegedly executed by father of defendants Gugan in favour of father of the plaintiff namely Ram Baksh is illegal, null and void ? OPD
4. Whether the plaintiff has not come to the Court with clean hands and suppressed material facts from the Court ? OPD
5. Whether the plaintiff has no locus standi to file the present suit ? OPD
6. Whether the plaintiff has no cause of action to file the present suit ? OPD

7. Whether the suit is bad for non-joinder of necessary parties ? OPD

8. Whether the plaintiff is estopped by his own act and conduct to file the present suit ? OPD

9. Whether the suit of plaintiff is not maintainable in the present form ? OPD

10. Relief.

3. The Trial Court vide judgment and decree dated 14.03.2017 dismissed the suit. Aggrieved by the same, an appeal was preferred which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 26.03.2021. Hence, the present regular second appeal.

4. Learned counsel for the plaintiff-appellant would contend that both the Courts have erred in dismissing his suit. It is urged that on the basis of the lease deed, the possession was handed over to the plaintiff-appellant and that they have been in continuous possession of the same and were thus entitled to the grant of injunction in their favour.

7. I have heard the learned counsel for the plaintiff-appellant.

8. In the present case both the Courts concurrently found that the plaintiff-appellant had failed to prove that he and his father were in exclusive possession of the property since the execution of the lease deed. Infact, the plaintiff-appellant himself stepped into the witness box as PW2 and admitted that the children of Gugan were in possession of the suit land as owners and were also cultivating the same. He also could not produce any receipt of rent paid to Gugan since 31.03.1987 till date. It was further found that revenue record also did not support the claim of the plaintiff-appellant.

Even the jamabandi did not reflect that any rent was being paid to Gudan or Jeeta. It was further the finding returned by both the Courts that the lease deeds were never acted upon. The learned counsel for the plaintiff-appellant had not been able to show any evidence on the record to even remotely suggest that the plaintiff-appellant was in possession of the suit property. In the absence of any evidence showing the plaintiff-appellant to be in possession of the suit property, no fault 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.

15.01.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

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