

2025:PHHC:009526



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.57 of 2018 (O&M)

Date of Decision 22.01.2025

Bir Singh alias Mali

.....Appellant

Vs.

Brijpal

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Man Mohan, Advocate with
Mr. Pronoy Srivastava, Advocate
for the appellant.

DEEPAK GUPTA, J.

A suit seeking decree of permanent injunction regarding property in dispute filed by plaintiff- Brijpal (respondent herein) was decreed by the trial Court on 22.12.2014 against which defendant – Bir Singh alias Mali (appellant herein) filed appeal but that appeal has been dismissed by the First Appellate Court on 11.05.2017. Against these concurrent findings of the Courts below, the defendant of the case has approached this Court.

2. In order to avoid confusion, the parties shall be referred as per their status before the trial Court.

3. The dispute is regarding property shown in letters 'ABCD' in the site plan Ex.P7 comprised in Khasra No.88//15/2 and 16 situated in revenue estate of Village Sui, Tehsil Bawani Khera, District Bhiwani. Plaintiff claimed to be owner in

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possession thereof and alleging interference on the part of defendant prayed for a decree of permanent injunction. Defendant, on the other hand, denied the possession of the plaintiff and claimed his own possession.

4. As per the case set up by the plaintiff, one Chander Singh was owner of 16 kanals of land in joint khewat standing in the name of proprietors of Thola. Chander was having five sons, namely, Ved, Jai Ram, Bir Singh, Satbir and Krishan and one daughter Chameli. Ved died issueless. On the death of Jai Ram, his share was inherited by his wife Munni Devi. Admittedly, vide an agreement to sell dated 26.12.2005 (Ex.P5), plaintiff purchased 02 kanals of land from Munni Devi upon which he raised construction of his house. That area is admittedly shown in yellow colour in site plan Ex.D1. Plaintiff also claimed to have purchased 02 kanal of land from the brothers of defendant, namely, Satbir and Krishan vide an agreement to sell dated 13.11.2009 Ex.P1; and yet another area of 02 kanal from Chameli Devi vide an agreement dated 14.11.2009 Ex.P6. The dispute is regarding this 4 kanal of land on which plaintiff claimed his possession. As per defendant, no sale deed was executed in favour of the plaintiff based upon the agreements to sell and so he could not claim the decree of injunction on the basis of title. It was further alleged that Chameli after her marriage did not have any share in the property of Chander Singh.

5. Necessary issues were framed. The evidence produced by the parties was taken on record. The trial Court decreed the suit and the findings have been affirmed by the First Appellate Court.

6. Assailing the findings, it is contended by learned counsel for the appellant-defendant that the Courts below failed to appreciate that plaintiff could not prove his title to the suit property and, therefore, no decree of injunction could have been passed in his favour.

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7. After hearing learned counsel for the appellant and perusing the paper book, I do not find merit in the contention.

8. As rightly observed by the First Appellate Court, in a suit simpliciter for permanent injunction, the Court was not required to delve into the issue of title. It was observed further that as far as possession was concerned, the site plan Ex.P7 relied by the plaintiff and the site plan Ex.D1 relied by the defendant were identical and thus, there was no dispute relating to location. Defendant- Bir Singh when appeared in the witness box as DW1 admitted that towards the north-east portion of Khasra No.88//15/2 and 88//16, Munni Devi used to be in possession and out of that, she had given possession of 02 kanal of land to Brijpal i.e. plaintiff on which he had raised construction of his house towards the western side adjoining to the property of the defendant. Not only this, defendant admitted the possession of the plaintiff; his brothers Satbir and Krishan had given their share to Manohar son of Mukhtiar although he was not aware that that land had been given to plaintiff by his brothers. The First Appellate Court further observed that comparative analysis of the two site plans revealed that disputed portion 'ABCD' was inaccessible to a person who did not have possession over the property shown towards eastern side of the red portion 'ABCD' as shown in Ex.D1 and this picture was more clear from Ex.P7 and looking from this angle, defendant could not have access to the land claimed by him to be in possession and this clearly demolished his case to be in possession of the suit property. The First Appellate Court further observed that appellant- defendant had utterly failed to establish that he was owner of the disputed property and even if the plaintiff was the trespasser, as no sale deed was executed in his favour, defendant could not interfere in the possession of the plaintiff.

9. Learned counsel for the appellant is unable to convince this Court regarding any error in the above-said findings of fact as recorded by the Courts below

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which are based upon proper appreciation of evidence on record. As such, this Court does not find any reason to interfere in the concurrent findings of fact as recorded by the Courts below. Holding the present appeal to be devoid of any merit, the same is hereby dismissed.

January 22, 2025

(DEEPAK GUPTA)

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JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No