

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****110****RSA-5332-2019 (O&M)****Date of decision: 06.03.2025****Beant Singh****...Appellant(s)****Vs.****Gurnam Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Surinder Sharma, Advocate for the appellant.

NIDHI GUPTA, J.**CM-15072-C-2019**

Prayer in this application filed under Section 151 CPC is for condonation of delay of 785 days in refiling the accompanying appeal.

The reason for delay of 785 days in refiling the appeal as stated in the present application are as under:-

"1. That the accompanying appeal was filed on 05.05.2017 within limitation. The registry returned the same on 22.06.2017 with some objections. The counsel for the appellant received from the registry after vacation. The counsel could not re-file same within 40 days because he required certain documents from the trial court. The same was received by counsel in the month of October 2017, after receiving the documents the counsel for the appellant found the file for preparation of appeal, it was found that file was misplaced somewhere in the office of the counsel and inadvertently the



counsel put the returned appeal along with some others appeal which was received by counsel from the registry in one brief and inadvertently kept in rack without writing any name on the brief. 2. That in the month of January the counsel fell ill due to liver problem and others problems and got started treatment from P.G.I. The treatment is still going on.”

Heard.

For the reasons mentioned in the application which is supported by an affidavit of learned counsel for the applicant/appellant, the same is allowed and delay of 785 days in refiling the accompanying appeal is condoned.

RSA-5332-2019 (O&M)

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the appellant/plaintiff for possession of land measuring 15K 4M as described in the head note of the plaint, with an additional prayer for Permanent Injunction, has been dismissed by both the Courts below.

2. At the very outset, it may be pointed out that the present appeal is of the year 2019. However, notice has not yet been issued in the same as the matter has been adjourned at request of learned counsel for the appellant on several dates.

3. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the ‘plaintiff’; and the respondent is the ‘defendant’.

4. Brief facts of the case as stated in the plaint are that the plaintiff was in settled possession of the suit land. In July 2005, he was in need of



money. As such, plaintiff asked defendant/respondent herein, to advance him a loan of Rs.5,50,000/-. The defendant agreed to pay him the said amount on the condition that plaintiff would transfer him the possession of the suit land for the purpose of cultivation. On 25.07.2005, the plaintiff received the said amount of Rs.5,50,000/- from the defendant; and a written Agreement in this regard was executed on the same day between them whereby condition was imposed that defendant will not charge any interest on Rs.2,00,000/-out of said amount of Rs.5,50,000/-. It was further agreed between the parties that on the remaining amount of Rs.3,50,000/-, the plaintiff would pay 2% interest per month from 25.07.2005 till date of repayment. As per the plaintiff, he was not aware that he could not execute such Agreement, but he executed the same with defendant. Plaintiff further averred that he was ready to pay total amount of Rs.10,75,000/- including borrowed amount of Rs.5,50,000/- and Rs.5,25,000/- as interest calculated thereupon till the filing of the suit. However, the defendant had refused to deliver the possession of suit land to the plaintiff. It was further pleaded in the plaint that the defendant had filed a suit for permanent injunction in respect of the present suit land and the present Agreement dated 25.07.2005 which was pending at the time of filing the present suit. It was pleaded by the plaintiff that few days prior to filing the present suit, defendant refused to hand over the possession of suit land after receiving the payment, and thus, plaintiff had filed the present suit.

5. Upon notice, the defendant appeared and resisted the suit by filing written statement *inter alia* stating that in actual fact, the Provincial



Government is the owner of suit land, which is duly reflected in ownership column of the relevant Jamabandi. It was also contended that at the time of filing of the suit there was criminal and civil litigations pending between the parties, and one Hem Charan Singh. Therefore, said Hem Charan Singh was also necessary party to the present suit. The present suit was therefore, bad for non-joinder of necessary parties. Defendant has particularly pleaded that Hem Charan Singh, resident of Mau Sahib also filed a civil suit for possession No. 295/2011 against him and Beant Singh plaintiff pertaining to suit land. Thus, as per the defendant, the plaintiff had no right to ask for possession of suit land from him. On merits, defendant has admitted earlier possession of plaintiff over suit land, but he has specifically contended that in the year 2003, he (defendant) took the suit land on theka/lease from plaintiff @ 10,000/- per acre per year; and thereafter, on 25.07.2005 plaintiff borrowed said amount of Rs.5,50,000/- from him. Defendant has also admitted the contention regarding imposing of interest on remaining borrowed amount of 3,50,000/-. However, as per specific stand of defendant, the Agreement had conveyed that in case plaintiff will not pay said amount along with interest to him within three years, then he (defendant) had right to get entered Khasra Girdawari of suit land in his name. So, defendant specifically denied that plaintiff had any right to ask for possession of suit land from him.

6. Defendant further specifically contended that act and conduct of plaintiff debars him from filing the present suit since in previous Civil Suit



No. 276/08 dated 04.10.2008 titled as 'Gurnam Singh Vs. Beant Singh', filed by the defendant for permanent injunction, the present plaintiff had filed written statement dated 04.12.2008 claiming that he was in possession of suit land, which shows that plaintiff had taken different stand in that suit. It is further stated that on 23.11.2011, Beant Singh suffered a statement on oath in that suit in this regard and the suit was dismissed as withdrawn. It was accordingly prayed that the present suit be dismissed.

7. Plaintiff filed replication re-asserting the averments made in the plaint and denying those made in the written statement.

8. From the pleadings of the parties following Issues were framed:-

1. Whether the plaintiff is entitled to possession of the suit land as prayed for? OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
3. Whether the plaintiff has got no locus standi to file the present suit? OPD
4. Whether the suit of the plaintiff is bad for mis-joinder and nonjoinder of necessary parties? OPD
5. Whether the suit is time barred? OPD
6. Whether the suit of the plaintiff is not maintainable? OPD
7. Relief.

9. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 to 4 and 6 against the plaintiff and in favour of the defendant; and issue No. 5 against the defendant and in favour of the plaintiff; and accordingly vide judgment and decree dated 29.08.2016, the learned trial Court dismissed the suit of the



plaintiff with costs. The appeal filed by the plaintiff was also dismissed by learned Additional District Judge, Jalandhar vide judgment and decree dated 27.01.2017, thereby affirming the judgment of the learned trial Court. Hence, the present second appeal.

10. Learned counsel for the appellant/plaintiff at the very outset, very candidly admits that the possession of the appellant over the suit land is not authorized. It is also admitted that title of the suit property is also not in dispute as the Provincial Government is admitted to be owner of the suit property. It is however, contended that the plaintiff is in possession of the suit property as Tenant At Will. It is submitted that by way of Agreement dated 25.07.2005 (Ex.P1), the plaintiff had given possessory rights of the suit property to the defendant. However, both the Courts below have failed to appreciate these facts and supporting evidence brought on record by the appellant. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the Courts below be set aside.

11. No other argument is raised on behalf of the appellant/plaintiff.

12. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail.

13. The facts on record are very clear. As per the Jamabandi pertaining to the suit property for the year 2009-10 (Ex.P3) the Provincial Government is shown to be the owner of suit property. Appellant is shown to be in possession as Tenant At Will. In column 10 of the said Jamabandi, the appellant is shown to be in illegal possession. Similarly in



khasra girdawari for the year 2010 to 2011, appellant is shown to be in possession of suit property. Besides the above documentary evidence, it has been admitted by learned counsel for the appellant, that the appellant is in unauthorised occupation of the suit land. It has also been admitted that neither of the parties to the suit is owner of the suit land, and it is the Provincial Government that is owner of the suit property. However, the plaintiff is basing his claim on Agreement dated 25.07.2005 (Ex.P1), as per which plaintiff claims to have given possessory rights to the defendant. However, as the plaintiff is admittedly, neither owner, nor tenant in the suit property, he cannot be stated to have any legal right of possession over the suit property. In any event, the Agreement on the basis of which the plaintiff is claiming possession is not enforceable. A perusal of the said Agreement dated 25.7.2005, shows that the same has been written on non-judicial stamp paper of Rs.25; and that there was creation of right and interest in the suit land i.e. immovable property of value more than Rs.100/-. Thus, as the transaction pertains to immovable property of value of more than Rs.100, therefore as per Section 17 of the Registration Act, 1908, the said document was compulsorily registrable; and in the absence of it, said document cannot be considered to create such right. Agreement dated 25.07.2005 is therefore, not enforceable. Agreement Ex.P1 being unregistered, the same also cannot be received as evidence of transaction. Hence, possession of land cannot be delivered to the appellant on the basis of the said unregistered document. Since the



appellant is not entitled to relief of possession, he would also not be entitled to consequential relief of permanent injunction.

14. Further, the said Agreement is an unregistered document which although contains recitals/narration of the Mortgage Deed however, neither is it pleaded to be a Mortgage Deed nor it appears so from its contents. And as the Provincial Government has been admitted to be owner of the suit land, therefore no mortgage could have been effected without the permission of the Provincial Government. Appellant had no right to file the present suit since suit land was owned by Provincial Government which is not made party in the present suit. Thus, the Suit was also not maintainable for non-joinder of necessary parties.

15. It is also relevant to note that the appellant/plaintiff has concealed material facts from the Court. The present defendant had previously filed a Civil Suit No. 276/08 dated 04.10.2008 titled as 'Gurnam Singh Vs. Beant Singh', for permanent injunction, in which the present plaintiff had filed written statement dated 04.12.2008 (Ex. D-1), stating therein that he was in possession of suit land. In the said suit, the plaintiff had got recorded his statement dated 25.9.2009 (Ex. D-3), as per which he had again claimed to have possession over the suit land, rather he/plaintiff had stated that defendant was never in possession of the suit land. This goes to show that the plaintiff has taken contrary stands in different proceedings from which it can be inferred that he has not come



clean before the Court. Moreover, the above said contrary stance of the plaintiff in the above said Civil Suit No. 276/08 17 dated 04.10.2008 does not advance the cause of the plaintiff in the present proceeding.

16. The record also reveals that on 17.07.2008 and 21.10.2008, the plaintiff had entered into Agreements with one Hem Charan Singh to transfer his possessory rights in respect of the suit land after receiving an amount of Rs.9,25,000/-. Appellant/plaintiff had not denied the execution of those Agreements dt. 17.07.2008 and 21.10.2008. It has come on record that Hem Charan Singh filed 2 civil suits, of which, one suit was against the plaintiff for specific performance of Agreement to Sell. In the said suit, the plaintiff had filed written statement (Ex. D-6), as defendant No.1 admitting therein that he was not owner of the suit property and that the Provincial Government was the owner of the suit property; and therefore, the said suit was bad for non-joinder of necessary parties. On a Court query, learned counsel for the appellant has also admitted that he has no knowledge regarding status of the civil suit pending between Hem Charan Singh and plaintiff. However, the record reveals that the said suit was decreed and Hem Charan was held entitled to recovery of Rs.9,25,000/-+ interest. From the above facts, it is clear that the Appellant/plaintiff had entered into Agreements at different points of time with other parties pertaining to same suit land regarding which he is claiming possession in the present suit; and at the same time he is taking stand that possession of suit land is lying with respondent/defendant.



17. In view of the above uncontroverted facts and findings, I find no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. For added measure, the relevant findings of the learned trial Court as contained in the judgment and decree dated 29.08.2016 read as under:-

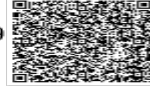
“21. It is also relevant to mention here that act and conduct of plaintiff is such that he otherwise is not entitled for any relief and he has concealed material facts from the Court. Rather, the Court would like to discuss the earlier litigation pertaining to suit property and stand taken therein by plaintiff, which litigation was pending decided at the time of filing the present suit. In this regard, it is specifically mentioned that while appearing into the witness box PW-2, plaintiff Beant Singh has shown his ignorance to the fact that defendant Gurnam Singh filed a suit earlier for permanent injunction for the year 2008 against him. However, in para No.5 of the plaint, there is specific reference of said suit. Further, during his cross examination, plaintiff has further shown his ignorance that whether or not he filed written statement in said suit and if it was filed, whether he took stand therein that he was in possession of suit land. Strange enough that when a specific question was put to plaintiff that Hem Charan Singh filed a suit for specific performance qua suit land against him, plaintiff as PW-2 has specifically replied/stated that he did not want to make any statement qua that suit. Relevant further to add here that cross examination of plaintiff was deferred and on 03.04.2015 he again appeared to stand cross examination. Now, in the very first line of his further cross examination, plaintiff has admitted that in said suit, his statement was recorded and his counsel Sh. Raj Kumar, Advocate had filed



written statement in said suit. Further, to save his skin, plaintiff has leveled allegations on his earlier counsel Sh. Raj Kumar, Advocate, but said allegations are bald without the support of any proof. Hence, such act and conduct of plaintiff shows that he was not willing to bring true facts before the Court and he tried to mislead the Court by all possible means.

22. In the same series of events, the Court would also like to refer the earlier litigation decided between the present parties as well as with Hem Charan Singh son of Sham Singh. Prior to that, it is relevant to refer here the certified copy of written statement filed in said suit for permanent injunction on 04.12.2008 by plaintiff Beant Singh whereas suit was filed by present defendant Gurnam Singh against him. Certified copy of said written statement is Ex. D-1 and plaintiff had specifically submitted in para No. A of preliminary objections that he had taken back the possession of suit land from defendant Gurnam Singh. Similarly, in his statement recorded on 25.09.2009 during trial of said suit, Beant Singh had claimed his possession over suit land and rather, he specifically stated that defendant Gurnam Singh never remained in possession of suit land. Certified copy of said statement is Ex. D-3. Similarly, Ex. D-4 is certified copy of legal notice got served by plaintiff on defendant on 13.09.2008 whereby, defendant Gurnam Singh was directed to hand over the possession of suit land to Beant Singh. So, from perusal of these documents it is clear that plaintiff was claiming his possession after execution of said Agreement dated 25.07.2005, which is totally in contradiction with his stand taken for relevant period in present lis.

23. The matter does not ends up here only as in another suit filed by Hem Charan Singh against present plaintiff and defendant claiming possession of suit land including other land on the basis of specific performance of an Agreements dated



17.07.2008 and 21.10.2008, plaintiff Beant Singh filed written statement as defendant No. 1. Certified copy of said plaint in said suit is Ex. D-5 and copy of written statement is Ex. D6. Strangely, plaintiff Beant Singh raised objection on said suit on the ground that said Agreements were not enforceable as he was not owner of suit land. It is made clear that plaintiff Beant Singh had not denied the execution of those Agreements dated 17.07.2008 and 21.10.2008. Further, said suit was decreed partly while holding Hem Charan Singh entitled for recovery of 9,25,000/- along with interest on the basis of those Agreements.

24. It is also relevant to add here that plaintiff Beant Singh as defendant No.1 in that suit had also taken stand that suit was bad for non-joinder of necessary parties as Provincial Government was not party. It is highly wondering that in the present suit also, plaintiff himself has not made Provincial Government as party, which was certainly a necessary party being owner of suit land as already discussed above. Furthermore, the certified copy of judgment passed in said suit on 18.11.2015 is Ex. D-7 and certified copy of decree is Ex. D-8. From perusal of said judgment, it is clear that on 17.07.2008 and 21.10.2008, plaintiff Beant Singh entered into an Agreement with Hem Charan Singh to transfer his possessory right pertaining to suit land after receiving an amount of 9,25,000/-.

25. So from above discussion regarding earlier litigation as well as taking into consideration the statement of plaintiff as PW-1, it is clear that plaintiff Beant Singh appeared into the witness box under oath to not to speak truth and he tried to conceal all material facts from the Court. Further, from above discussed litigation, it is clear that plaintiff had entered into Agreements at different points of time with other parties pertaining to suit



land regarding which, he is claiming possession in the present suit and at the same time, he is taking stand that possession of suit land is lying with defendant Gurnam Singh. Thus, certainly plaintiff cannot wriggle out of his stand taken in earlier litigation. In other words, it is well established on record that in earlier litigation, which was pending since 2008 till the filing of present suit and even prior to that since year 2005 (the year in which present Agreement was executed between the parties), plaintiff Beant Singh had taken different stand regarding his possession over the suit land. More so, in his cross examination, plaintiff as well as his witness PW-1 Balbir Singh has categorically admitted that apart from Gurnam Singh, his sons are also in possession of suit land, which are not made party in the present suit, who were necessary party in these circumstances. So, suit otherwise is bad for non-joinder of necessary parties." (Emphasis added)

18. The relevant findings of learned Lower Appellate Court as contained in the judgment and decree dated 27.01.2017 read as under:-

"14. The plaintiff when leading evidence in support of his claim, examined one Balbir Singh, witness of the Agreement dated 25.07.2005 as PW-1. He proved the Agreement dated 25.07.2005 as Ex.P1. Beant Singh, plaintiff himself entered the witness box and was examined as PW-2. He proved the certified copy of the plaint of the suit for permanent injunction filed by the defendant against him as Ex.P2. Sonia, Record Clerk, Civil Courts, Phillaur appearing as PW-3 proved the certified copy of the Agreement dated 25.07.2005 as Ex.P1.

15. The defendant on the other hand, has not denied the execution of the Agreement dated 25.07.2005. He also does not deny that he is in possession of the suit property on the



basis of the Agreement. The claim of the defendant is that the plaintiff is not entitled to possession of the suit property on the basis of the Agreement dated 25.07.2005. Perusal of the jamabandi pertaining to the suit property for the year 2009-2010 proved as Ex.P3 reveals that therein the Provincial Government is shown to be the owner of the suit property. The plaintiff Beant Singh is shown to be in possession as a tenant at Will. In the column No.10 of the jamabandi, the plaintiff is shown to be in illegal possession of the suit property. Similarly, in the khasra girdawari of the suit property for the agricultural season Souni 2010 to Hari 2011, the plaintiff is shown to be in possession of the suit property. In these circumstances, it is clear that the ownership of the land vests in Provincial Government. The plaintiff was only in illegal possession of the suit property.

16. The plaintiff claims that he delivered the possession of the suit property to the defendant on the basis of the Agreement dated 25.07.2005 Ex.P1. He claims that he is ready to repay the loan amount along with interest and therefore, he is entitled to possession of the suit property. From the above, it is clear that the plaintiff otherwise has no legal right to possession of the suit property (because he is neither the owner, nor tenant in the same). He is only claiming possession on the basis of the Agreement dated 25.07.2005 Ex.P1. Perusal of the terms of the Agreement Ex.P1 reveals that vide the same, the possession of the land was transferred to the defendant on payment of a sum of Rs.5,50,000/-. As per the Agreement dated 25.07.2005 Ex.P1, the plaintiff is entitled to claim possession of the land on payment of a sum of Rs.5,50,000/- with interest. Section 17 (i) (b) of the Registration Act, 1908 provides that any non-testamentary instrument otherwise than a gift, which purports or operates to create, declare, assign, limit or extinguish in



present or in future, any right, title or interest whether vested or contingent of the value of Rs.100/- or upwards, to or in immovable property, then the said document is required to compulsorily registered. In the present case, while obtaining the loan of Rs.5,50,000/- from the defendant, the plaintiff created vested interest of the value at more than Rs.100/- in the suit property. The said right could be created only by a registered document. The Agreement Ex.P1 is an unregistered document. Section 49 of the Registration Act, 1908 provides that where a document is required under Section 17 of the Registration Act, 1908 to be registered and it is not so registered, it shall not be received as evidence on any transaction affecting such property or conferring such power. In these circumstances, the Agreement Ex.P1 cannot be treated as evidence of the transaction, vide which the possession of the land was delivered to the defendant in lieu of the loan of Rs.5,50,000/- with interest at the agreed rate. The plaintiff in the present case seeks possession of the suit property on the basis of the Agreement Ex.P1. The Agreement Ex.P1 being unregistered, the same cannot be received as evidence of the transaction and therefore, the possession of the land cannot be delivered to the plaintiff on the basis of the said un-registered document. So, the point No.1 for determination is decided against the plaintiff and in favour of the defendant.” (Emphasis added)

19. Learned counsel for the appellant/plaintiff is unable to dispute or controvert the above said facts and findings.
20. Accordingly, the present regular second appeal is **dismissed**.



21. Pending applications, if any, stand disposed of.

06.03.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No