

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****116****RSA-3022-2018 (O&M)****Date of decision: 13.01.2025****Rati Ram****...Appellant(s)****Vs.****Smt. Laxmi Devi & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Saurabh Singh, Advocate  
for the appellant.

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**NIDHI GUPTA, J.**

The plaintiff is in second appeal against the concurring judgment and decree dated 20.01.2017 passed by the learned Additional District Judge, Sonapat; affirming the judgment and decree dated 10.05.2013 passed by the learned Additional Civil Judge (Senior Division), Sonapat; whereby the suit of the appellant for declaration and permanent injunction has been dismissed.

2. Brief facts of the case are that the appellant had filed the present suit seeking declaration to the effect that he is the sole and exclusive owner in possession of the house in dispute as fully mentioned in Para 1 of the plaint. The appellant also sought declaration that the alleged auction certificate dated 01.07.1977 issued by the Wakf Board in favour of respondents No.1 and 2/ defendants No.1 and 2 and registered Sale Deeds dated 28.04.2004 and 17.08.2007 in favour of defendants No.5 and 6/respondents No.5 and 6 are illegal, null and void and are not binding on the rights on the appellants. It has been pleaded in the plaint



that the plaintiff purchased a plot having an area of 100 square yards comprised in khasra No.4225/2min situated at Rathdhana Road, Sonepat through a registered Sale Deed No.992 dated 25.07.1966 from Shobh Raj, Ishwar Dass and Munshi Ram. It has been further pleaded that appellant was serving in Indian Army and after purchasing of the plot in question, he got constructed his house and started living in his house with his wife. Appellant has no male issue and has only two daughters. Defendants No.1 and 2/Respondents No.1 and 2 are wife and son of the real brother of the Appellant. It has been pleaded that respondents have no right, title or interest in the suit property. It has been further pleaded that respondents are very dishonest and greedy person and they want to grab the suit property under the colour of some auction deed from Wakf board. It has been further pleaded that auction certificate issued by Wakf Board is pertaining to some other property/land/plot. But the respondents want to grab the suit property under the colour of the alleged auction certificate. It is stated that the Wakf Board can give its property in auction only to the person found in possession of the concerned property. It has been further pleaded that total area of Khasra No.4225/2 min is approximately measuring 100 square yards but the Appellant and respondents No. 1 and 2 might have purchased some other land measuring 94 sq. yards. It has been pleaded that defendants No. 1 and 2 filed an earlier suit against the Appellant for injunction and the then Civil Judge (SD) directed both the parties to maintain status quo with regard to



construction and possession over the disputed property. But the respondents No.1 and 2 have withdrawn their suit on 31.08.2007 without mentioning any reason. It has been pleaded that respondents No.5 and 6 purchased the suit property from respondents No. 1 to 3 during the pendency of the suit and as such they cannot take the plea of bonafide purchasers. Appellant requested the respondents to admit his claim but to no use. With these pleadings, the present suit was filed.

3. Upon notice, the defendants/respondents herein had appeared and filed reply resisting the suit of the appellant/plaintiff. The title of the appellant was disputed by inter alia pleading that he had never purchased any share from the Khasra No.4225/2min; and even his alleged vendor had no title to pass to the appellant. No rejoinder thereto was filed by the appellant. On the basis of pleadings of the parties, following issues were framed by the learned trial Court vide order dated 13.01.2009: -

*“1. Whether the plaintiff is owner in possession of the house in dispute as detailed in paragraphs number 1 of the plaint and the auction certificates dated 01.07.1997 issued by the Wakf certificate dated 01.07.1997 issued by the Wakf Board in favour of defendant numbers 1 and 2 are null and void and not binding on the rights of the plaintiff in respect of the suit property? OPP.*

*2. Whether the plaintiff has not cause of action to file the present suit?OPD*

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



*4. Relief.”*

4. On the basis of evidence led by both the sides, the learned trial Court dismissed the suit of the appellant with costs vide judgment and decree dated 10.05.2013. The appellant filed appeal dated 02.07.2013 before the learned Additional District Judge, Sonapat; which was also dismissed vide judgment and decree dated 20.01.2017. Hence, the present second appeal.

5. Learned counsel for the appellant contends that the learned lower Courts have wrongly decided the issue No.1 against the appellant; whereas this issue ought to have been decided in his favour, and the suit of the appellant has therefore been wrongly dismissed. The appellant had purchased the plot in dispute measuring 100 square yards from the real owner through registered Sale Deed No.992 dated 25.07.1966 (Mark A). The plot purchased by the appellant was a part and parcel of Khasra No.4225. The appellant even constructed his house upon the plot in question where he is residing with his family. However, with the passage of time, the surrounding of the plot changed, which has been misconstrued by the learned Courts below.

6. It is further submitted that the respondents No.1 and 2 despite knowing that they are not real owners of the plot in question and have no title or right thereto, further sold the said plot to respondents No.4 and 6 to avoid legal implication. It is contended that therefore, the respondents have played fraud and concealment. However, this legal



aspect has not been considered by the learned lower Courts below. It is contended that the appellant has purchased the 100 square yard plot after spending huge amount of money. The respondents No.1 and 2 had fraudulently and in connivance with the officials of M.C. Sonapat got the house tax receipts Ex. D10 to D20 in their own name just to establish their illegal possession. The intention of respondents No.1 and 2 has not been detected by the learned Courts below. While deciding issues No.1 and No.2, the learned Courts below failed to consider the records/ documents Ex. Pl/A, P-2 and Mark-'A' minutely. Thus, in face of the stand taken by the appellant both the issues No.1 and 2 ought to have been decided in favour of the appellant rather wrongly decided against the appellant. It is accordingly prayed that the impugned judgments and decree of learned Courts below be set aside.

7. No other argument is raised on behalf of the appellant.
8. I have heard learned counsel for the appellant and perused the case file in great detail.
9. At the very outset, it may be pointed out that the present appeal pertains to the year 2018. However, notice has not yet been issued as the matter has been adjourned at the request/due to non-appearance of the learned counsel for the appellant on 08.08.2018, 15.01.2020, 20.04.2023, 21.09.2023, 28.11.2023, 23.01.2024, 16.05.2024 and 16.09.2024.



10. On merits, it is the case of the appellant that he was owner in possession of the suit land measuring 100 square yards comprised in Khasra No.4225/2min by way of registered Sale Deed No.992 dated 25.07.1966 (Mark A). However, a perusal of the record reveals that as per the uncontroverted evidence on record, the said Sale Deed from which the appellant claims to have purchased the suit plot, did not even mention the Khasra number allegedly purchased by him. In fact, as per the evidence on record, even the title of the vendors of the appellant was not clear. On the other hand, as per the sale/auction certificates (Ex.D1 to D4) produced by the defendants No.1 and 2/respondents No.1 and 2, it was proved that the suit plot was allotted to them; and that the suit plot matched with the surroundings as mentioned in the said sale certificates (Ex.D1 to D4). In this regard, the relevant findings of the learned trial Court returned vide judgment and decree dated 10.05.2013 are as under:-

*“9. The plaintiff was also supposed to prove the title of his vendors. In this respect, it is submitted that though Khasra number has not been given in the sale deed under which plaintiff claims to have purchased the suit plot; however he has pleaded in his plaint that the plot purchased by him was a part and parcel of khasra number 4225. A perusal of Exhibit P-1 (Hindi version Exhibit P-1/A), makes it clear that the real owners were in possession of hasab rasad rakba khewat. Therefore, even if it is presumed for the sake of arguments that the plot purchased by the plaintiff was a part and parcel of khasra number 4225, but the fact remains that the title of vendors of the plaintiff was also not clear. Since the names of*



*plaintiffs vendors were recorded only in the possession column, therefore, in order to prove their title, plaintiff was under an obligation to prove their share in the hasab rasad khewat and also that they were not in possession of more than their legitimate share. However, there is absolutely no evidence on this aspect. Therefore, even the title of plaintiff's vendor was not clear.*

*10. Learned counsel for the plaintiff has placed more weight on his contention that since the plot in dispute measures 100 square yards and since the impugned allotment letters in faovur of defendant numbers 1 and 2 are in respect of total land measuring 94 square yards, therefore, an inference should be drawn that the defendant numbers 1 and 2 are not the allottees of the plot in dispute. Learned counsel for the plaintiff was painfully reminded of the golden rule that the plaintiff cannot draw benefit from the weakness of defendants case. He has to sail at his own and has to prove his own case.*

*If the above referred argument of learned counsel for the plaintiff is accepted then in that eventuality the plaintiff would be permitted to lay his hands on all plots measuring 100 square yards and situated to the east of the Rathdhana Road. Therefore, there is no force in this contention. On the other hand, as discussed above the plaintiff has failed to prove the title of his vendors and he has also failed to prove his own sale deed and he has also failed to prove that the plot purchased by him is the suit plot only and that only his neighbors have changed with the passage of time. A perusal of the sale certificates, issued in favour of defendant number 1 and 2 rather reveals that it is the suit plot only which was allotted to them. The surroundings of the suit plot match with*



*the surroundings of the property described in these sale certificates....”*

11. It has further been contended by learned counsel for the appellant that he is in possession of the said plot. In this regard, it is to be noted that the defendants no. 1 and 2 had produced house tax receipts Ex. D 10 to Ex. D 20 from 1997-98, to demonstrate that prior to them, the suit property was in the possession of father of defendant no.2. Admittedly, the Wakf Board can give its property in auction only to the person found in possession of the concerned property. As such, the impugned sale certificates have been correctly issued to the concerned defendants. The relevant findings of the learned trial Court as contained in Para 11 of the impugned judgment are as under:-

*“11. The next question to be decided by this court is as to whether the plaintiff is in possession of the suit plot or not. In this respect it is submitted that the plaintiff has taken contradictory stands in his plaint. On the one hand he has pleaded that the impugned sale certificates in favour of defendant numbers 1 and 2, do not pertain to the suit plot and on the other hand he has pleaded that since he was in possession therefore, alleged sale certificates should have been issued in his favour. This later pleading implies that as per him also the sale certificates issued in favour of defendant numbers 1 and 2, pertain to the suit plot only. The impugned sale certificates were issued in the months of June and July 1997 and the defendant numbers 1 and 2 have placed on record, house tax receipts with effect from 1997-98 onwards. (Exhibit D-10 to Exhibit D-20). A perusal of these receipts makes it ample clear that earlier the suit plot was in*



*possession of Sh. Hari Ram-the father of defendant number 2 and the husband of defendant number 1. however the sale certificates have been issued in favour of defendant numbers 1 and 2. Therefore, it is ample clear that the impugned sale certificates have been issued on the basis of possession only. An inference can be safely drawn that before issuing the sale certificate, the concerned authorities, must have verified possession of the proposed vendees/allottees. A perusal of these sale certificates also reveals that compensation to the tune of Rs. 29126/- was also paid by the vendees/allottees. Therefore, also an inference can be drawn that the defendant numbers 1 and 2 only were in possession of the suit plot before issuance of the impugned sale certificates. The plaintiff was therefore required to prove as to how and when he took possession of the suit plot. However, there is not an iota of independent evidence, except for the controverted pleadings of the self serving statement of the plaintiff, for providing plaintiff's possession over the suit plot. He has examined two witnesses of record and one himself. On the other hand the house tax receipts placed on record by the defendant numbers 1 and 2 are sufficient to infer defendants possession. Therefore, the plaintiff has also failed to prove his possession over the suit plot.”*

12. As such, the Id. trial Court concluded that the appellant had failed to prove the title of his vendors; had failed to prove his own Sale Deed; had failed to prove that the plot purchased by him was indeed the suit plot; and that only his neighbours had changed with the passage of time; or that the Authorities have illegally sold his plot to respondents



No.1 and 2. Accordingly issue No.1 was decided against the appellant and in favour of the defendants. Accordingly, suit of the appellant was dismissed.

13. The appeal filed by the plaintiff was also dismissed as no evidence to the contrary was produced even before the lower Appellate Court. Relevant findings of the learned lower Appellate Court are as under:-

*“13. It is admitted fact that the original sale deed dated 13.07.1966 executed by Shobh Raj in favour of plaintiff has not been produced by plaintiff on the record. Mark-A is the photocopy of the sale deed I dated 13.07.1966. As per evidence Act, marked document cannot be taken into consideration. But considering the fact that sale deed Mark A was produced from the record of Sub Registrar Sonapat and was brought by PWI Ms Ajit Kaur Registration clerk from Tehsil Officer Sonapat, Sonapat and in these circumstances and in the interest of justice, contents of sale deed are taken into consideration to ascertain the fact whether the plaintiff purchased the suit property in question or not. As per the sale deed Mark-A dated 13.07.1966 Shobh Raj on his behalf and on behalf of Ishwar and Kanshi Ram being their special power of attorney sold 100 sq. yards land in favour of the plaintiff Net Ram, NO Khasra number has been mentioned in the sale deed Mar-A. The entire case of the plaintiff is based on sale deed Mark-A dated 13.07.1966. Ex.P1 is the copy of jamabandi for the year 1966-67, Ex. P1/A is Hindi Translation and as per Ex. P1/A Shobh Raj and Ishwar Dass sons of Prem Chand were shown to be in possession as co sharers in the land bearing Khasra No. 6839/4225 measuring 5K-5M. The*



*suit land is owned by Shamlat Patti MusalmanHasab, Rasad, RaqbaKhewat. Name of Kanshi Ram has not been mentioned in the jamabandi Ex.PI pertaining to the year 1966-67.*

*Therefore, as per Ex. PI Kanshi Ram has gotno concern with Khasra No. 6839/4225 and as such sale deed Mark-A is of some other property. Khasra NO. 6839/4225 has not been mentioned in the sale deed Mark-A. In these circumstances, it cannot be said that sale deed Mark-A is pertaining to the property shown in jamabandi Ex. P1/A.*

*XXX*

*15. On the other hand, defendants No.1 and 2 got the suit property by way of sale deed executed by custodian department and Ex.D1 to EXD3 are sale deeds. In all of these sale deeds in favour of defendants, it has been clearly mentioned that property sold by Tehsildar sale in favour of defendants No. 1 and 2 bearing plot No. 4225/2min is situated at Rathdhana Road. The boundaries mentioned in the sale deeds Ex.D1 to Ex. D3 tally with the boundaries shown by the plaintiff in the plaint i.e. the suit land. Therefore, it is clear that boundaries mentioned in the Ex. D1 to Ex. D3 tally with the suit property and defendants No.1 and 2 purchased the said property from custodian department. In these circumstances, defendants proved that they purchased the suit property from custodian department. On the other hand plaintiff failed to prove the fact that he became owner of the suit land vide sale deed Mark-A dated 25.07.1966.”*

14. Accordingly, by way of concurrent findings, the suit of the appellant/plaintiff was dismissed.



15. Learned counsel for the appellant is unable to controvert or dispute the aforesaid findings of the learned Courts below.

16. In view of the above, present appeal is **dismissed**.

17. Pending application(s) if any also stand(s) disposed of.

**13.01.2025**

Sunena

**(Nidhi Gupta)**

**Judge**

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