



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
215 **RSA-144-2012 (O&M)**
Date of decision: 16.01.2025

Jagtar Singh

...Appellant(s)

Vs.

Gurbachan Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ankush Chauhan, Advocate
for the appellant.

NIDHI GUPTA, J.
CM-343-C-2012

This is an application under Section 151 of CPC for condonation of delay of 43 days in re-filing the appeal.

After going through the contents of the application, which is supported by affidavit, the same is allowed subject to all just exceptions and delay of 43 days in re-filing the present appeal is condoned.

MAIN CASE

The defendant No.1 is in second appeal before this Court against the concurrent findings of the learned Courts below whereby the suit for permanent injunction of the plaintiff/respondent No.1 herein, has been decreed by both the Courts below vide judgment dated 19.04.2007 passed by the learned Additional Civil Judge (Senior Division), Hoshiarpur; and judgment dated 27.07.2011 passed by the learned Additional District Judge (Adhoc) Fast Track Court, Hoshiarpur.



2. The parties shall hereinafter be referred to as per their status before the learned trial Court.

3. At the very outset, it may be pointed out that the present appeal pertains to the year 2012. The matter was initially adjourned at request of learned counsel for the appellant on 05.03.2012, 26.09.2012 and 07.03.2013. Thereafter, notice of motion was issued to respondent No.1 only vide order dated 30.08.2013, whereafter the matter has been adjourned at request of learned counsel for the appellant or due to non-representation on behalf of the appellant on 19.03.2014, 16.07.2015, 10.05.2016, 21.11.2016, 08.12.2017, 21.09.2022, 09.01.2023, 15.03.2023 and 27.04.2023. Today also a request for adjournment has been made on behalf of learned counsel for the appellant. Clearly, therefore, the learned counsel for the appellant is not seriously interested in pursuing the present appeal. However, keeping in view the above facts, this Court declined the request of the learned counsel for the appellant.

4. Brief facts of the case are that the plaintiff has filed the instant suit for permanent injunction restraining defendants No.1 to 3 from interfering into peaceful and lawful possession of plaintiff over the house marked as ABCD, shown red in colour in site plan. Defendant No.4 (Jatinder Singh) was the owner in possession of plot. He executed an agreement to sell his plot ABCD in favour of plaintiff for consideration of Rs.17,000/- vide agreement to sell dated 17.07.2000. Defendant No.4 received the entire sale consideration of Rs.17,000/- and possession was delivered to plaintiff



by defendant No.4. Later plaintiff constructed a house over the plot. Plaintiff is in possession of the said house and defendants no.1 to 3 have no concern with the same. But being headstrong persons, they wanted to dispossess the plaintiff from the house in dispute. No relief was claimed against defendant no.4. Plaintiff requested defendants no.1 to 3 many a times not do the illegal acts but they were adamant and were threatening to dispossess the plaintiff forcefully and forcibly from the house in dispute. Hence, with these pleadings, the suit was filed by the respondent/plaintiff.

5. Upon notice the defendants no.1 to 3 put in appearance and resisted the suit by filing joint written statement, taking numerous objections and denying the alleged agreement dated 17.7.2000 executed by defendant no.4 in favour of plaintiff as he was not owner of the suit property. Defendant no.4 was proceeded against ex-parte vide order dated 20.9.2002, as he failed to put an appearance. Replication was filed by the plaintiff reiterating the averments made in the plaint.

6. On the basis of the pleadings of the parties, the following issues were framed by the learned trial court vide order dated 6.3.2003: –

“1) Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP.

2) Whether the plaintiff is in possession of the property in dispute ? OPP.

3) Whether the suit is not maintainable in the present form? OPD.



- 4) *Whether the plaintiff or defendant No. 4 have or had nothing to do with the property in dispute ? OPD.*
- 5) *Whether the site plan is not correct? OPD.*
- 6) *Whether the plaintiff has no locus standi to file the present suit ? OPD.*
- 7) *Whether the property in dispute has not been described correctly ? OPD.*
- 8) *Relief.”*

7. The learned trial court, vide judgement and decree dated 19.4.2007 decreed the suit of the plaintiff with costs. Issues No.1 and 2 were decided in favour of plaintiff holding that the plaintiff is entitled to permanent injunction and plaintiff is in possession of property in dispute. However, Issue No.4 – whether the plaintiff or defendant No.4 had nothing to do with property in dispute – was decided partly in favour of plaintiff and partly in favour of defendants.

8. The Appeal filed by the defendant was dismissed by the learned 1st Appellate Court, vide judgement and decree dated 27.7.2011. Hence, present second appeal.

9. Ld. Counsel for the defendant no.1/appellant, assails the impugned judgments by submitting that defendant no.4 was not the owner of the suit property. In fact, defendant no.3 and Surjit Singh were in possession of the suit property and had gifted the same to the Gurudwara Singh Sabha Bahawal on 5.3.2001. As such the alleged agreement to sell



dated 17.7.2000 executed by defendant no.4 in favour of the plaintiff is denied.

10. No other argument is raised on behalf of the appellant.

11. I have heard learned counsel for the appellant and perused the case file and record in great detail.

12. The case put up by the appellant is demolished by the testimony of PW1 Satnam Singh, Ex.-Sarpanch who has testified that he remained as Sarpanch from 1997 to 2003. He along with one more person (Kulbir Singh) had signed the agreement to sell dated 17.07.2000 (of plot measuring 22 marlas in favour of plaintiff) as a witness. Kulbir Singh went abroad. He has identified his signatures on agreement to sell/ Ex.P1. PW1 further testified that after execution of agreement to sell, the possession was given to plaintiff on same very day; thereafter the plaintiff has constructed rooms, maintained electricity and water bills and started residing therein along with his family members. The plaintiff appeared as PW2 and tendered his affidavit as Ex.PW2/A wherein he reiterated version of plaint. The plaintiff further produced documentary evidence Ex.P3 to P5 viz receipts and bills of electricity consumption of said house. In his cross-examination, the plaintiff/PW2, further admitted that Defendant No.4 owned only one house in village Bahawal which was purchased by him.

13. The record further reveals that DW1 Mohinder Singh has tendered affidavit Ex.DW1/A stating that property in dispute was not owned by defendant No.4 but defendant No.3 and Surjit Singh and same



was gifted by them to Gurudwara. The plaintiff was never in possession and no construction was done by him. However, in his cross-examination, he admitted that the electricity and water connection were in the name of the plaintiff; that the Plaintiff is the owner in possession of the house; and that the Plaintiff has raised construction and has been residing in the house with family members.

14. Even DW2 Gurmit Singh tendered affidavit Ex.DW2/A reiterating the version of DW1. In his cross-examination, DW2 has admitted that the suit property belongs to defendant No.4 and he has sold it to plaintiff for Rs.17,000/-. Even DW3 Jagtar Singh/defendant No.1/appellant has tendered affidavit Ex.DW3/A; and has admitted in his cross-examination that on 23.04.2001 case was registered against him and others regarding demolishing house of plaintiff and he is on bail. He further testified that the property was not gifted (to the Gurudwara Sahib), by any writing. This fact is noticed by the learned trial court in para 18 of the judgement dated 19.4.2007 as follows: –

“18. DW3 Jagtar Singh has tendered his affidavit, Ex. DW3/A wherein he has re-iterated the version of the defendant as per written statement. In the cross examination he has testified that plaintiff is ad-dharmi and is rickshaw puller. He has admitted that on 23.4.2001 police of Mahilpur had registered case No.37 against him and others regarding demolishing house of the plaintiff forcibly and he is on bail in said case which is still pending. He has, testified that property was not gifted by any writing.”



15. On the basis of the pleadings, and the evidence on record, the learned trial court held that the plaintiff cannot claim himself to be the owner as agreement to sell dated 17.07.2000, although proved in accordance with law, was never got enforced by the plaintiff. Moreover, plaintiff had also failed to prove title of defendant No.4 over property in dispute. In regard to gifting of property to Gurudwara by defendant No.3 and Surjit Singh on 05.03.2001, the defendant had placed on record attested copy of gift deed dated 10.01.2007 Ex.D1 but same relates to area measuring 2 marlas/1 Sarsahi and boundaries do not tally with suit property. In any event, the Possession of plaintiff over the suit property was proved and admitted by witness of defendants. In respect to Issue no.5, it was held that the plaintiff has produced on record site plan as Ex.P1 which was proved by him while appearing as PW2. No counter site plan was produced by the defendant. The relevant findings of the learned trial court in respect of the above are as follows: –

“20 . In the instant case agreement to sell dated 17.7.2000 Ex.P1 has been duly proved by the plaintiff but this agreement was not got enforced by the plaintiff, therefore, agreement to sell does not confer any title upon the plaintiff. Moreover, the plaintiff has failed to prove the title of Jatinder Singh over the property in dispute,, therefore, he cannot claim himself to be owner of the property in dispute on the basis of said agreement.

XXX XXX XXX

22. As regard the plea of defendant regarding gifting the property to Gurudwara Singh Sabha, Bahawal by defendant



No. 3 Jagdish Kaur and Surjit Singh on 5.3.2001 is concerned, though, the defendant has placed on record the attested copy of gift deed dated 10.1.2007 Ex. D1, but the same relates to area measuring 2 marlas 1 Sarsahi and boundaries of the said property do not tally with the suit property. The possession of the, plaintiff has been duly proved on the record and even admitted by the witnesses of the defendants. Defendants have no right to dispossess the plaintiff from the property in dispute forcibly and illegally. Suit filed by the plaintiff is well maintainable and he is entitled to the injunction as prayed for. Hence, issues Nos.1 & 2, are decided in favour of the plaintiff and against the defendants whereas issue No.3 is decided against the defendants and in favour of plaintiff and issue No.4 is partly decided in favour of the plaintiff and partly in favour of defendants.

23. Onus to prove this issue was upon the defendants. Plaintiff has produced on record the site plan Ex.P1. Though the plaintiff has not examined draftsman who had prepared the said site plan but the same was proved by the plaintiff, while appearing in the witness box as PW2. No objection was raised by learned counsel for the defendants in the exhibition of said site plan. Even defendants have also not filed any counter site plan and possession of plaintiff has been proved on the record, therefore, the site plan produced by the plaintiff is held as correct and hence this issue is decided against the defendant and in favour of the plaintiff.”

16. The appeal filed by the present appellant against the above said judgement and decree dated 19.4.2007, was dismissed by the learned Additional District Judge Hoshiarpur vide judgment and decree



dated 27.07.2011 holding that when the plaintiff has taken possession of property in question in part performance of agreement to sell dated 17.07.2000 proved on record as Ex.P1, he is entitled to retain the same until sale deed is executed in his favour by defendant No.4; Defendants No.1 to 3 have no right to dispossess the plaintiff; when they tried to do so FIR (Ex.PW3/A) was registered against them; The possession of plaintiff over house in question stands proved from testimony of DW1 and DW2; DW3 clearly stated that defendant No.4 was the owner; No gift deed dated 05.03.2001 in favour of Gurudwara was found to have been proved on record; rather the photocopy of gift deed dated 10.01.2007 only on behalf of Jagdish Kaur (defendant No.3) in favour of Gurudwara has been proved on record as Ex.D1.

17. Learned counsel for the appellant is unable to dispute or controvert the above said evidence/findings or give any satisfactory explanation for the same. Thus, even on merits, no ground is made out to interfere in the concurrent findings of the learned Courts below.

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

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

16.01.2025
Sunena

(Nidhi Gupta)
Judge

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