IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

117 **RSA-729-2025 (O&M)**
Date of Decision: 07.03.2025

Raj Singh Chhikara **…..Appellant**

Vs.

Rajender Singh and Others **…..Respondents**

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Nitin Nandal, Advocate
for the appellant.

****

DEEPAK GUPTA, J. (ORAL)

Suit for permanent injunction regarding property in dispute filed by plaintiff Rajender Singh *(contesting respondent herein)* was decreed by the trial Court on 29.11.2022. Appeal against the said judgment as filed by defendant No.1 *(appellant herein)* was dismissed by the first Appellate Court on 04.12.2024. Against this concurrent finding, the defendant No.1 of the case has approached this Court by way of present Regular Second Appeal.

2. Contentions raised by learned counsel for the appellant have been heard and paper-book perused.

3.1 Admittedly, plaintiff had purchased a plot measuring 150 sq. yard out of gair mumkin land comprised in Khewat No.1430, Khasra No.3849/ 2077 situated within the Revenue Circle of Bahadargurh, Tehsil Bahadurgarh, District Jhajjar from Ram Singh vide sale deed dated 15.09.1984, regarding which mutation No.11908 dated 29.10.2013 was sanctioned. It is also not in dispute that out of this land, he had given 20 sq. yard (3’6” X 50’) land to his brother - defendant No.1, which is depicted in the map by letters BEFC in red colour.

3.2 According to the plaintiff, he was left with the remaining plot measuring 130 sq. Yard, on which he had raised boundary wall and installed a gate towards Southern side. It was alleged that houses of the defendants are surrounding the suit property and taking benefit thereof, defendants were threatening to encroach upon the same and take forcible possession of the suit property. To restrain the defendants from doing so, plaintiff prayed for a decree of permanent injunction.

3.3 Defendant No.1, who contested the suit did not dispute initial ownership of the plaintiff of the plot measuring 150 sq. Yard, out of which he had given 20 sq. yard of that plot to him (defendant No.1). It was claimed that in fact both of them had purchased respective plots of 150 sq. yard each in 1984. It was claimed that in November, 2005 a verbal settlement took place between him and plaintiff, as per which defendant shall be owner in possession of the entire plot of the plaintiff measuring 150 sq. yard, which the said plaintiff had purchased vide sale deed No.3678 dated 15.09.1984 and that plaintiff shall transfer the same to him as and when asked to do so. In exchange, defendant had agreed to relinquish all his rights in two double storey residential houses situated within the Lal Dora of Village Kanonda, Gher measuring 268 sq. yard and agricultural land measuring 3.25 Bigha belonging to him (defendant) situated in the revenue estate of Village Kanonda. Defendant pleaded that as per verbal settlement, parties got possession of their respective properties and this way, defendant was owner of the entire 300 sq. yard of land i.e. the two plots. He controverted the other averments of the plaint and prayed for dismissal of the suit.

3.4 Defendant Nos.2 to 4 supported the stand of defendant No.1.

4. Necessary issues were framed. Evidence produced by the parties was taken on record. Learned trial Court vide judgment dated

29.11.2022 decreed the suit; and the said judgment has been affirmed by the first Appellate Court on 04.12.2024 as already noticed.

5. Assailing the aforesaid findings, it is contended by learned counsel for the appellant-defendant No.1 that Courts below have failed to appreciate the evidence on record in right perspective.

6. Before commenting on this contention, it will be relevant to reproduce the observations made by the first Appellate Court, while discussing the evidence on record. The same reads as under:

> "10. Before entering upon the aspect of adjudication qua the alleged illegality and irregularities in the findings of impugned judgment and decree, this Court firstly would like to highlight the admitted facts of the case. It is not disputed and denied that in year 1984, the appellant-defendant and respondent-plaintiff purchased two adjacent plots of 150 sq. yards area each. Both these plots were purchased by dint of separate sale deeds. The plot of respondent-plaintiff has been towards western side of the plot purchased by the appellant-defendant. This factum is further proved from the sale deed Ex.P1, which is reflecting that the respondent-plaintiff purchased the plot of 150 sq. yards area from the vendor, who was legally competent to transfer and sell the same. The mutation Ex.P2 also supports and corroborates this factum.
>
> 11. However, the dispute comes whether the plot purchased by respondent-plaintiff by dint of sale deed Ex.P1, was ever agreed to be given or not to appellant-defendant in some family settlement. The next question would come whether the respondent-plaintiff is owner and also in possession or not of the suit property, which is highlighted in green colour in site plan Ex.P3.
>
> 12. The appellant-defendant claim some family settlement in this regard in year 2005 but there is no writing of any nature in this regard.

Secondly, the claim of family settlement of year 2005 stand vitiated from the factum that in year 2015 the appellant-defendant agreed to pay Rs.8,00,000/- to respondent-plaintiff from portion of 20 sq. yards land, which had been used and utilized by appellant-defendant for getting his residential house constructing. Had there been any family settlement either in year 2005 or thereafter to give the plot of respondent-plaintiff to the appellant-defendant, there was neither any need nor any reason or occasion for the appellant-defendant to agree and to pay Rs.8,00,000/- to respondent-plaintiff qua the 20 sq. yards of area, which admittedly has been part and parcel of the plot of sale deed Ex.P1. Thus, this aspect goes to negates in totality that there has been any kind of family settlement between appellant-defendant and respondent-plaintiff by agreeing to give the suit property by respondent-plaintiff to appellant-defendant.

13. Learned counsel for appellant-defendant highly stressed upon the affidavit Ex.D1 but the same is of no value. Firstly because it is unregistered document and relating to some property worth Rs.100/- or more and thus not admissible in evidence. Secondly, the affidavit Ex.D1 do not reflects without any doubt that it was executed by respondent-defendant to give the suit property to appellant-defendant. Rather, it is an affidavit reflects that with respect to the dispute of encroached portion of 20 sq. yards area of plot of respondent-plaintiff, the matter was resolved with the intervention of respectable and other family members. The affidavit Ex.D1 was executed to get the proforma respondents-defendants exonerated from criminal proceedings of the case of FIR No.154 dated 06.04.2015, P.S. City Bahadurgarh. Had the affidavit Ex.D1 been a settlement deed between the parties to the case with regard to transaction of giving the suit property by respondent-plaintiff to appellant-defendant, certainly there would have been no occasion for prosecution of that criminal case against the appellants-defendants by respondent-plaintiff. So, the affidavit Ex.D1 is not part of evidence, which is either admissible one or the same is either title document or settlement deed showing and proving that respondent-plaintiff ever agreed to give the suit

property to appellant-defendant.

14. Thereafter comes the question of remaining part of evidence led by parties with regard to their respective claims of ownership and possession of the suit property. The respondent-plaintiff appeared as PW1 and deposed specifically that he is owner and in possession of suit property by raising boundary walls over it as well installing gate towards the northern side of the same. Nothing fruitful was extracted in cross-examination by appellant-defendant either to belies the version of the respondent-plaintiff or to substantiate his own claim and stand of appellant-defendant. On the contrary, the appellant-defendant appeared as DW1 and he in cross-examination candidly admitted that the respondent-plaintiff is owner of the suit property. As such, the oral account of both the appellant-defendant and respondent-plaintiff goes to prove that the respondent-plaintiff has proved very well that he is not only owner of the suit property but also in possession of the same by raising its boundary walls and by getting one gate towards northern side installed over it.

15. It is also relevant and material to observe that in case of vacant land, which is in dispute before Court of Law, its possession travel with the title of such property. In present case, the appellant-defendant has failed to prove his title qua the suit property and opposite to it, the respondent-plaintiff has proved his title qua the suit property and therefore it would be take in the eyes of law that the respondent-plaintiff is not only owner of suit property but also he is in settled possession of the same. Reliance in this regard may be placed upon the case ***Akbar Ali Molla & Ors. Vs. Saonargaon Housing Cooperation Society Ltd. 2002(2) Cal.L.T.314 and Kallu Vs. Abdul Jabbar & Ors. 2015(38) RCR (Civil) 1***.

16. Once, the respondent-plaintiff has successfully proved not only his title qua the suit property but also his possession over it, the learned Trial Court was legally and logically justified in granting decree of permanent injunction in favour of respondent-plaintiff and against the appellant-

defendant as well proforma respondents-defendants. Thus, this Court do not find any kind of illegality and irregularity in the findings recorded by learned Trial Court by dint of impugned judgment and decree dated 29.11.2022. Therefore, the findings of impugned judgment and decree stands affirmed.

7. It is clear from the abovesaid observations made by the first Appellate Court, which are based upon proper appreciation of evidence produced on record that though the family settlement was pleaded by the defendant to have taken place in 2005 but no evidence to that effect was produced. The said alleged family settlement was vitiated from the fact that in 2015, the appellant-defendant had agreed to pay ₹8,00,000/- to the respondent-plaintiff for portion of 20 sq. yard of land, which had been used and utilized by him for getting his residential house constructed. Learned first Appellate Court has rightly observed that had there been any family settlement in the year 2005 or thereafter, there was no requirement for the defendant to agree to pay ₹8,00,000/- to the plaintiff *qua* 20 sq. yard of area, which was admittedly part and parcel of the plot depicted in sale deed Ex.P1 belonging to the plaintiff. Learned first Appellate Court has also rightly discarded Ex.D1 by observing that the said affidavit, which was an unregistered document purported to transfer property of value of more than ₹100/- in respect of the encroached portion of 20 sq. yard area and as such, it did not convey any title. It was also noticed that regarding the encroachment of 20 sq. yard area made by the defendant, plaintiff had even lodged an FIR at Police Station City, Bahadurgarh and it is to resolve that dispute that affidavit Ex.D1 had been executed. Learned Appellate Court has rightly observed that property in dispute is bounded by boundary wall with a gate and that possession of the said property will go with the title.

8. This Court does not find any misreading of evidence or any

mis-appreciation of evidence on the part of the Courts below in this regard. There is no ground to interfere in the well-reasoned concurrent findings of facts recorded by the Courts below. As such, holding the present appeal to be devoid of any merit, same is hereby dismissed.

All the miscellaneous application(s), if any, stand disposed of.

(DEEPAK GUPTA)
JUDGE

March 07, 2025
Neetika Tuteja

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