

**IN THE HIGH COURT OF PUN JAB AND HARYANA AT CHANDIGARH**

RSA-2072-2019 (O&M)
Reserved on : 16.12.2024
Pronounced on : 07.01.2025

Nihal Singh ...Appellant

VERSUS

Naveen Yadav ...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sudhir Aggarwal, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal is by the plaintiff-appellant against the judgements and decrees dated 17.04.2015 and 04.10.2018 passed by the Trial Court and the First Appellate Court dismissing his suit.

2. Briefly, the facts are that the plaintiff-appellant filed a suit for permanent injunction for restraining the defendant-respondent from encroaching any portion of the suit land or blocking the Rasta. It was averred that the plaintiff-appellant is the owner in possession of the suit land having received the same in a court decree dated 14.09.1995 in suit no.8/95 titled as "Nihal vs. Munshi & Ors." and since then the plaintiff-appellant had been in possession of the suit land as owner along with the Rasta. As per the plaintiff-appellant the defendant-respondent had purchased 7/51 share from one Ram Niwas s/o Rohtas vide sale deed dated 19.10.2012 to whom the said share was sold by the plaintiff-appellant on 08.05.2000. According to the plaintiff-appellant the defendant-respondent had threatened to encroach upon the portion of the suit land of the plaintiff-appellant and was also trying

to encroach and block the Rasta which Rasta was shown in the decree passed in suit no.8/95 titled as “Nihal vs. Munshi & Ors.” though the defendant-respondent had no right, title or interest. Hence, the suit. In the written statement the defendant-respondent raised preliminary objections of locus standi, cause of action, non-joinder and mis-joinder of necessary parties. On merits it was stated that the plaintiff-appellant had himself sold the land to Ram Niwas s/o Rohtas vide sale deed dated 08.05.2000 and had handed over physical possession of the same and that thereafter the said Ram Niwas s/o Rohtas had sold the land in favour of the defendant-respondent vide sale deed dated 19.10.2012 and had handed over the possession to the defendant-respondent. It was submitted that in both the sale deeds it had been mentioned that the possession towards the land of Ghisa Ram had been handed over, first to Ram Niwas s/o Rohtas and then to the defendant-respondent. It was claimed that the defendant-respondent was in peaceful possession of the suit land and had also installed a submersible pump on it.

3. The Trial Court framed the following issues :

1. Whether the plaintiff is entitled to a decree of permanent injunction restraining the defendants from encroaching any portion of land of the plaintiff or blocking the rasta shown in red colour as described in para no. 1 of the plaint ? OPP
2. Whether the plaintiff has no locus standi to file the present suit ? OPD
3. Whether the suit is bad for non joinder and mis joinder of necessary parties ? OPD
4. Relief.

4. Vide judgement and decree dated 17.04.2015 the Trial Court dismissed the suit of the plaintiff-appellant. His appeal was also dismissed by the First Appellate Court vide judgement and decree dated 04.10.2018. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant has argued that both the Courts have erred in dismissing his suit. It is urged that the plaintiff-appellant had become owner of the suit land under decree passed in suit no.8/95 titled as "Nihal vs. Munshi & Ors.". Though the plaintiff-appellant had sold a part to Ram Niwas who thereafter sold the same part to the defendant-respondent, the plaintiff-appellant was owner in possession of the portion which the defendant-respondent was attempting to encroach. It was submitted that in fact the suit should have been decreed and the possession of the plaintiff-appellant protected.

6. Heard learned counsel for the plaintiff-appellant.

7. In the present case both the Courts have found that the plaintiff-appellant and the defendant-respondent are co-sharers. The plaintiff-appellant failed to establish his exclusive ownership and exclusive possession over the suit land. As per the sale deed Ex.DW2/A the plaintiff-appellant sold 7/51 share to Ram Niwas s/o Rohtas. Thereafter vide sale deed Ex.DW2/B the said Ram Niwas s/o Rohtas sold the same land to the defendant-respondent. In the Jamabandi Ex.P2 produced by the plaintiff-appellant, both the plaintiff-appellant and Ram Niwas are shown as co-owners. No revenue documents have been placed on the record in evidence to show that the plaintiff-appellant and the defendant-respondent are in possession of a certain specific portions of the suit land. In the absence of any evidence having been led by the plaintiff-appellant to show that he was

in exclusive possession of the suit land, no injunction can be granted in his favour. Further still, even if the plaintiff-appellant is in possession of some portion of the suit land which is held by him along with other co-owners, the remedy would be to file a suit for partition. No other point was argued.

8. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

07.01.2025
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No