



IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH

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**RSA-1040-2021 (O&M)
Date of decision: 19.03.2025**

Jarnail Singh

...Appellant(s)

Vs.

**Jarnail Singh (since deceased) through
his LRs and others**

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Tarundeep Kumar, Advocate for the appellant.

NIDHI GUPTA, J.

CM-4690-C-2021

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 12 days in filing the accompanying appeal.

Heard.

For the reasons mentioned in the application which is duly supported by an affidavit of the applicant/appellant, the same is allowed and the delay of 12 days in filing the accompanying appeal is condoned.

CM-4691-C-2021

Prayer in this application filed under Section 151 CPC is for condonation of delay of 47 days in refiling the accompanying appeal.

Heard.

For the reasons mentioned in the application which is duly supported by an affidavit of the applicant/appellant, the same is allowed and the delay of 47 days in refiling the accompanying appeal is condoned.

**RSA-1040-2021 (O&M)**

The plaintiff No.1 is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the plaintiffs for grant of declaratory decree to the effect that the plaintiffs are owners in exclusive possession in respect of the suit land measuring 02 kanals 04 marlas bearing khewat No. 11/9, Khautoni No. 31, comprising of khasra, numbers 103, as mentioned in the Jamabandi for the year 2010-2011 situated in the area of village Allowal, Tehsil Khadur Sahib, Distt. Tarntaran; with a decree of Permanent Injunction to the effect that the defendant be restrained forever from interfering into the peaceful and lawful possession of the plaintiffs over land measuring 02 kanals 04 marlas as fully detailed above forcibly, illegally otherwise than in due course of law; and further restraining the defendant from alienating the said land measuring 02 kanals 04 marlas in any manner whatsoever i.e. by way of sale, mortgage, lease, gift, will and exchange etc., has been partly decreed by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff No.1'; and the respondent No.1 is the 'defendant'.

3. Learned counsel for the plaintiff No.1 *inter alia* submits that the in not granting injunction in favour of the appellant, the learned Courts below have failed to appreciate that the alleged writing dated 11.2.1979 is not an Agreement to Sell and is in fact an unregistered sale deed. The said writing is a forged and fabricated document prepared by the defendant



himself and in connivance with the witnesses to grab the property of the plaintiffs. As such, the defendants are not entitled to get benefit of Section 53-A of the Transfer of Property Act.

4. Furthermore, the learned Courts below were also in error in ignoring the revenue record as per which plaintiffs are shown to be in possession of the suit land. It is submitted that as per jamabandi for the year 2010-11 (Ex.P1); demarcation report (Ex.P2/A); and also as per girdawari in the year 2012-13, the suit land is reflected in the name of Gurnam Singh and others. As per Ex.P6 to P9, the alleged writing dated 11.02.1979 is proven to be forged and fabricated. The learned Courts below also failed to take into consideration the medical evidence showing that Gurnam Singh was unable to move around and needed 24 hours caretaker. As such, he was not in a condition to execute the alleged Agreement to Sell dated 11.2.1979. However, all this evidence has been ignored/misconstrued by the Courts below. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

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

6. I have heard learned counsel for the appellant/plaintiff No.1 and perused the case file in great detail.

7. The brief facts of the case as set up in the plaint are that the plaintiffs are recorded as owners in possession of the suit land measuring 2 kanals 4 marlas including 55 kanals 6 marlas being half share of plaintiff No. 3, and 1/4th share each of plaintiffs No. 1 and 2. The plaintiffs are using the



said Gair Mumkin Taur as a haveli in which they are throwing their crushed straw. It is the case of the plaintiffs that the defendants with the help of some anti social elements had tried to take forcible possession of the suit land of 2 kanals 4 marlas. It was the defendant's case that the suit property measuring 2 kanals 4 marlas was purchased by him by contract of sale executed by Bachan Singh (father of plaintiff No.1 and 2) and Gurnam Singh plaintiff No.3, vide Agreement dated 11.02.1979; and that the defendant is in possession since then.

8. The learned Courts below had partly decreed the suit of the plaintiffs holding to the effect that though the plaintiffs are proven to be owners of the suit land measuring 2 kanals 4 marlas; however, they were not in possession and were not entitled to get possession as defendant was in possession of the suit property. As such defendant was protected by Section 53-A of the Transfer of Property Act as he was still waiting to perform his part of contract.

9. I am in agreement with the view taken by the learned Courts below. No doubt, as per jamabandi for the year 2010-11 (Ex.P1); as also as per girdawari for the year 2013-14 (Ex.P4), the plaintiffs are recorded as owners of the suit property; and also shown to be in possession of the suit property. However, the said revenue entries stood rebutted from the Agreement to Sell dated 11.02.1979 (Ex.D1) produced by the defendant. As per Ex.D1, Bachan Singh and Gurnam Singh had handed over possession of the property in dispute in favour of the defendant.



10. Moreover, the writing dated 11.02.1979 (Ex.D1) also stood duly proved from the evidence of DW6 Sukhpreet Kaur handwriting and finger print expert, who deposed through her duly sworn affidavit (Ex.DW6/A). DW6 had deposed that she has compared the disputed thumb impression of Bachan Singh with his standard thumb impressions S2 and S3 which were taken from Will of 20.04.1988 executed by Bachan Singh summoned from the office of Sub Registrar Khadoor Sahib. After detailed comparison of the sample and standard thumb impression of Bachan Singh, DW6 gave definite opinion that disputed thumb impression Q1 and standard thumb impressions S2 and S3 are affixed by one and the same person. Thus, the appellant was unable to prove that the writing dated 11.02.1979 is a fraudulent document.

11. The possession of the defendant over the suit property is also proven from the fact that the plaintiffs had alleged that there is no boundary wall around the plot in question. However, the defendant had placed on record site plan (Ex.D2) which was duly proved by Draftsman Salwinder Singh DW5, who had stated that the site plan dated 26.07.2014 was prepared by him after visiting the spot and that the said site plan was in respect of the house/haveli of the defendant. DW5 had further deposed that the said site plan was prepared after proper measurement. The defendant had also placed on record photographs (Ex. D1 to Ex.D5) from which it was clear that the suit property stood surrounded by a wall and that two doors of the house of the defendant open towards the vacant plot in question. The said photographs were also proven by the evidence of



photographer Ramesh Singh DW2. As such possession of the defendant over the suit property was duly proven. As per site plan (Ex.D2), house of the defendant is shown to be adjoining the suit plot and the two doors of the house of the defendant open on the vacant suit plot. This fact has been admitted by the plaintiff himself in his cross-examination and by his witness Ram Singh.

12. No doubt, mere Agreement to Sell would not confer any right or title on the defendant unless and until Sale Deed is executed. However, from the above facts, it is also established that the defendant is in possession of the suit property; and by virtue of provision of Section 53-A of the Transfer of Property Act, he is entitled to enjoy possession of the suit property but cannot be held to be owner of the property in dispute.

13. It has also been candidly admitted by learned counsel for the appellant that the possession of the suit property is not with the plaintiffs.

14. In view of the above facts, the present regular second appeal is hereby **dismissed**.

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

19.03.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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