

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5651 of 2015 (O&M)
Date of Decision.31.10.2015

Bikkar Singh s/o Sh. Dalip SinghAppellant
Versus
Subhash Chander and anotherRespondents

Present: Mr. NS Gill, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The appeal is by the plaintiff who filed a suit for injunction in respect of property of an extent of 2 kanals 13 marlas claiming the property to be in his possession. According to him, the property was in the possession of his father and after his death in the year 2002, the said property was in his possession. The plaintiff would contend that the 1st defendant's father was attempting to sell the property in excess of his share in the year 1981 and he filed the suit in the Court of the Subordinate Judge First Class, Barnala that held that the vendor had only a right to 1/16th share and sale in excess of the same will not be valid. The plaintiff's contention was, therefore, that the 1st defendant was claiming a right to be in possession of property by virtue of purchase obtained that had been declared to be invalid, cannot give him any right to possession and the threat of dispossession made by the defendant would require to be warded off by decree of injunction.

2. The contention in defence was that the 1st defendant was

entitled to 1/15th share in the whole property and the 4/5th share was owned by the 2nd defendant. The contention was that ever since of the document of purchase held, the whole of the property was in the possession of the defendants only and at no point of time was the plaintiff and the plaintiff's father was in possession. The defendant's contention, therefore, was that even if the sale was not to be taken as valid, the defendant had been in possession ever since the document of purchase in the year 1981 and he had prescribed title to the property by adverse possession. Since the suit was for bare relief of injunction, the Court was primarily concerned of the fact of possession and it found that there was no document filed by the plaintiff to show the plaintiff's possession or his father. The plaintiff was attempting to show some change in the revenue entries subsequent to the institution of the suit which the Court found as irrelevant for the purpose of the case. If the earlier round of litigation decided no more than the invalidity of the sale by the defendant in excess of his share, it cannot automatically mean that the plaintiff was in possession of the property. The plaintiff's possession ought to have been established if they were to succeed in an action for injunction. With no evidence for plaintiff's possession, the Court was justified in dismissing the plaintiff's suit. The Appellate Court also confirmed the same.

3. I find no substantial question of law for consideration in the second appeal. The second appeal is dismissed as devoid of merits.

(K. KANNAN)
JUDGE

October 31, 2015
Pankaj*