

**IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH**

-:-

**R.S.A No. 1146 of 1986 (O&M)
Decided on : February 25, 2015**

Dalip Raj

... Appellant.

Versus

Vijay Kumar Puri & Ors.

... Respondents

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

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

Ms. Alka Sarin, Advocate, for the respondents.

Mahavir S. Chauhan, J. (Oral)

Gopal Dass Puri predecessor in interest of the plaintiff, namely Dalip Raj purchased portion of a house bounded towards north by well, vacant property of Gopal Dass Puri towards south by house of Gulam Farid Khan now in possession of Ram Ji Dass and Chaman Lal towards east by “rasta” and towards west by property of Maya Devi purchased vide sale deed dated 14.10.1946 (Exhibit P/3). Plaintiff-Dalip Raj claims to have inherited property from said Gopal Dass Puri and that the defendants/respondents who have no concern with the property in dispute encroached upon it and raised illegal construction somewhere in the year 1981. He, therefore, filed a suit for mandatory injunction to direct the respondents to demolish the “unauthorised” construction statedly raised on portion shown as GHIO and IODCJ of the house and northern compound

demarcated as ABCD-GHIK-KLMN as shown in the site plan (Exhibit P/1) attached with the plaint. In the alternative, he sought possession of the suit property from the respondents. In addition, a decree of perpetual prohibitory injunction to restrain the defendants/respondents from raising construction of any kind over the suit property was also sought.

To seek the aforestated reliefs averments as hereinbefore stated were made in the body of the plaint. Suit of the appellant was resisted by the respondents by filing written statement wherein, while denying all the allegations of the plaint, it was stated that the property under their occupation did not belong to the appellant and as such there was no reason to grant a decree of possession or mandatory injunction or perpetual prohibitory injunction. It was also stated in the written statement that the respondents are exclusive owners in possession of the property under their occupation and construction thereon was in existence for more than 12 years preceded filing of the suit. Preliminary objections with regard to locus-standi of the appellant and valuation of the suit property were also pleaded.

After a replication to controvert what was stated in the written statement and to reiterate what was said in the plaint had been filed, learned Court of Subordinate Judge, Class-I, Batala (hereinafter referred to as the 'trial Court') found following issues to be involved in the matter:-

- 1.) Whether the suit is bad for non-joinder of necessary parties?OPD.
- 2.) Whether the suit is not maintainable in the present form?OPD.
- 3.) Whether the plaintiff is entitled to the injunction

prayed for?OPP.

3A) Whether the suit is properly valued for the purposes of court fee and jurisdiction?OPP

3B) Whether the plaintiff is entitled to the possession of the suit land?OPP

4) Relief.

To prove his case appellant examined himself as PW-6 in addition to Suresh Chander, Naksha Nawis as PW-1, Advocate H.R.Sekhri as PW-2, Advocate Sushil Kumar as PW-3, Jagdish Singh as PW-4 and Sat Pal as PW-5. To rebut evidence brought on record by the appellant, respondents examined Gopal Dass (DW1), Satish Chander, Naksha Nawis (DW2) and Rollu Mal (DW3).

On hearing both the sides in the light of evidence available on record, learned trial Court found that the appellant was able to substantiate his plea. Accordingly, his suit was decreed vide judgment/decreed dated 31.03.1984.

Judgment/decreed dated 31.03.1984 of the learned trial Court was challenged by the respondents by way of Civil Appeal No. 94 of 1984. Learned Additional District Judge, Gurdaspur (hereinafter referred to as the 'first appellate Court'), on hearing the parties and appraisal of evidence available on record of the learned trial Court came to the conclusion that the findings recorded by the learned trial Court were not backed by evidence available on record, and, instead, from the evidence it was established that the property under occupation of the respondents did not belong to the appellant. Accordingly, the civil appeal was allowed and appellant's suit

was dismissed vide judgment/decreed dated 13.02.1986.

To assail correctness of the findings recorded by the learned first appellate Court, the unsuccessful plaintiff Dalip Raj is in regular second appeal.

I have heard learned counsel for the parties.

It is vehemently argued by learned counsel for the appellant that the learned first appellate Court has wrongly reversed the well reasoned findings recorded by the learned trial Court on the basis of submissions put forth on behalf of the respondents with regard to the property owned by Gulam Fareed Khan even though no such plea was taken by them in the written statement and, as such, the first appellate Court has ignored the well established proposition of law that no amount of evidence which is not backed by pleadings can be taken into consideration by a Court. It has also been argued that the appellant has brought sufficient evidence to establish that the property purchased by Gopal Dass vide sale deed, Exhibit P/3 is the same property which was subject matter of the previous proceedings, but the learned first appellate Court has wrongly held that the property involved in the present proceedings as per description given in the heading of the plaint could not be proved to be the property belonging to the appellant.

Per Contra on behalf of the respondents it has been argued that even as per case of the appellant on the south of the property purchased by Gopal Dass, vide sale deed Exhibit P/3 property of Gulam Fareed Khan was there and that being so the findings recorded by the learned first appellate Court cannot be interfered with as the appellant has not been able to prove that the property which is now being claimed by him is the same property as

was purchased by Gopal Dass vide sale deed, Exhibit P/3. It is also submitted by learned counsel for the respondents that the regular second appeal is not shown to involve any substantial question of law and not only that the grounds of appeal are silent in this regard the appellant has failed to place on record any substantial question of law in spite of grant of sufficient opportunity to him to do so. That being so, according to learned counsel for the respondent, the appeal cannot be entertained in view of embargo contained in Section 100 of the Code of Civil Procedure, 1908 ('C.P.C' – for short).

Nothing more has been urged on the either side.

Very specific and categoric case of the appellant before the courts below has been that the property purchased by Gopal Dass vide sale deed, Exhibit P/3, as bounded as contained therein is as under:-

“Dalip Raj purchased portion of a house bounded towards north by well, vacant property of Gopal Dass Puri towards south by house of Gulam Farid Khan now in possession of Ram Ji Dass and Chaman Lal towards east by “rasta” and towards west by property of Maya Devi.”

Learned counsel for the appellant has also referred to sale deed, Exhibit P/3, as also its translated copy to substantiate this plea. Even the respondents do not dispute this position. However, the learned first appellate Court while dealing with the appeal brought by the respondents to assail correctness of the findings recorded by the trial Court has observed as under:-

“it is recited in the sale deed that Smt. Maya Devi was the owner of /2 share and she sold her ½ share. It was submitted by the learned counsel for the appellants that Smt. Maya Devi sold only half portion towards the south of which lay the house of Gulam Farid Khan. Smt. Maya Devi did not sell and property towards the south of which lay the property of Gulam Dastgir or the property of Rehmat Ullah. It was submitted that towards south of Waddi Haveli there were many in possession. In the register of acquired Urban Evacuee immovable properties from no.2 Ex. DW9/E,DW9/F against entries no. 22, 23,26 are shown the properties owned by Muslim evacuees. These entries relate to property no. B-II-64, BII.65, BII-68 Property BII-65 was owned by Gulam Dastgir Pathan. Property BII-64 was owned by Gulam Farid Khan. Property BII.68 was owned by Rehmat Ullah. Property BII.64 was allotted to Teja Singh, vide allotment (Ex.DW4/A). Property BII.65 was allotted to Hazara Singh, Conveyance-deed was executed in his favour by Tehsildar Sales-cum-M.O., on 08.02.1975 Hazara Singh (DW7) sold this house to Smt. Sumittran daughter of Balaki Ram, wife of Chaman Lal, House No.BII-68 situated in inside Puri Gate, Batala was sold to Ram Murti son of Ramji Dass (DW8) and Ex.DW8/D is the certificate of sale issued

by the District Rent Managing Gurdaspur in favour of Ram Murti. Ex.DW4/A is the conveyance deed executed in favour of Teja Singh by the District Rent Managing Officer, Amritsar with regard to house BII-64. In the north of property BII – 64 is shown as local house in conveyance deed (Ex.DW4/A) on the east is shown road, on the west is shown house of Hazara Singh and gali. House of Hazara Singh was house No. BII-65 which was owned by Gulam Dastgir and which was allotted to Hazara Singh. Site plan (Ex. D.1) relied upon by the defendants is thus correct because the boundaries of the property owned by Gulam Farid Khan as shown in conveyance deed (Ex.DW4/A) tally with those as given in plan (Ex.D.1) Raghbir Chand (PW7) stated that he has been President, Municipal Committee, Batala for five years i.e. 1979 to 1984. He has been Municipal Commissioner since the year 1972 onwards. He has seen Waddi Haveli situated in Katra Purian, Mohalla Purian, Batala. Before the year 1947 towards the south of this building there was the house of Gulam Farid Khan who alone was in possession. Appellants raised construction 4/5 years back. Site where the construction was raised by the appellants was in possession of Smt. Maya Devi prior to the year 1947. Maya Devi sold this property comprising two

kothris and kitchen. After the sale of this property by Maya Devi, Lala Gopal Dass was in possession. Before the present construction, the appellants were not in possession. Maya Devi had ½ share in the house which was sold by her to Gopal Dass, Kotu Mal and others were owners in the other ½ share of the house. No reliance can be placed on the statement of Raghbir Chand (PW7) as his statement is against the facts. Towards the sought of this Waddi Haveli not only there was Gulam Farid Khan but also Gulam Dastgir and Rehmat Ullah.”

Learned counsel for the appellant has not been able to show anything to the contrary except for submitting that the plea which has been taken note by the first appellate Court was not a part of the pleadings of the respondents in written statement.

True, it was not so pleaded by the respondents in the written statement, but a perusal of the written statement would reveal that it is very specific case of the respondents therein that the property under occupation of the respondents is not the property belonging to the appellant. This, in my considered view, is sufficient pleading, as the settled position of law is that details and evidence in support of plea need not be pleaded.

Be that as it may, Section 100 C.P.C, lays down that a regular second appeal can be entertained by a Court only if it is shown to involve a substantial question of law. As pointed out by learned counsel for the respondents, the grounds of appeal as submitted by the appellant do not

refer to any such substantial question of law. It also transpires from the record that during the pendency of the appeal a request was made on behalf of the appellant to allow him an opportunity to place on record the substantial questions of law involved in the appeal. However, for the reasons best known to the appellant, no such substantial questions of law have been placed on record notwithstanding adjournment of the matter on various occasions. Even during the course of hearing, learned counsel for the appellant has not been able to show involvement of any such substantial question of law in this regular second appeal.

In view of the above, I regret my disinclination to re-appraise the evidence recorded by the learned trial court which has been very meticulously examined by the learned first appellate Court to non-suit the appellant.

Consequently, the appeal fails and is dismissed leaving the parties to bear their own costs.

February 25, 2015
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[Mahavir S. Chauhan]
Judge