

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Regular Second Appeal No.1703 of 1987(O&M)

Date of decision: 30.11.2015

Kuldip Singh

.....Appellant

versus

Nanku and others

.....Respondent

Regular Second Appeal No.2431 of 1987(O&M)

Kesho Dass Singh

.....Appellant

versus

Nanku and others

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Kanwal Goyal, Advocate for the appellant
in RSA No.1703 of 1987
Mr.Gautam Mittal, Advocate for the appellant
in RSA No.2431 of 1987
Mr.P.N.Aggarwal, Advocate for the respondents
in both the cases
Mr.Suvir Sehgal, Advocate for respondent No.18
in both the cases.

*1. Whether Reporters of Local Newspapers may be allowed to see the judgment ? **Yes***

*2. To be referred to the Reporters or not ? **Yes***

*3. Whether the judgment should be reported in the Digest? **Yes***

Kuldip Singh, J.

This judgment shall dispose of RSA Nos.1703 of 1987 and 2431 of 1987, arising out of the same judgment and decree dated 5.2.1987, passed by the learned Additional District Judge, Gurdaspur,

partly decreeing the suit after modifying the judgment and decree dated 23.1.1984, passed by the learned Sub Judge, 1st Class, Pathankot.

Facts of the case are that Nanku etc. plaintiffs filed a suit for declaration to the effect that they are owners of land measuring 44 kanals 2 marla bearing khewat No.1 in Red 1 min, Khewat No.10 in Red 9 min, Khatoni No.1, 3 and 37 bearing khasra Nos.95, 94, 96 and 105 as per Jamabandi for the year 1976-77 situated in village Tahara, H.B. 382 Tehsil Pathankot, District Gurdaspur. Plaintiffs also prayed for decree of possession of the suit land along with the consequential relief for recovery of Rs.5000/- on account of damages for use and occupation of the said land.

The case of the plaintiffs is that Kesho Dass Singh defendant No.1 and Kuldip Singh defendant No.2 were the owners of the suit land. During consolidation of land holding, the suit land was allotted to Nanku and other plaintiff Nos.1, 2, 3 and 6 and Giano (predecessor in interest of plaintiff Nos.4 and 5). In lieu of this allotment, the land belonging to the said plaintiffs bearing Khasra No.114, 111, 112, 116, 108 and 115 was allotted to defendant Nos.1 and 2. It was stated that a copy of order dated 20.4.73 will be produced at the stage of evidence. Defendant Nos.1 and 2 took possession of the land allotted to plaintiffs. The said land has since been acquired by Union of India for defence purposes and defendant Nos.1 and 2 have already received compensation for the same. Defendant No.3 Balwant Singh is the attorney of defendant Nos.1 and 2 and manages the affairs of defendant Nos.1 and 2. Although

mutation No.276 was sanctioned in favour of plaintiffs yet their names were not entered in the column of ownership in the Jamabandi prepared thereafter nor the plaintiffs were delivered possession of the suit land by defendant Nos.1, 2, 3 and 6. Everybody in the village Tahara knew that the plaintiffs are owners of the said land and they have been allotted the said land in consolidation. Despite this knowledge, the defendant Nos.4 to 13 collusively and fraudulently purchased the part of the said land from defendant Nos.1 to 3 who were left with no interest in the suit land nor they were having any right to sell the same. Although the plaintiffs are entitled to possession of the suit land being owners from the date of order of Additional Director Consolidation passed on 20.4.1973 yet the plaintiffs have been deprived of use and occupation of the same by the defendants. Though the amount of compensation for use and occupation is much more yet the plaintiffs claim only Rs.5000/-. Defendants were requested to admit the claim of the plaintiffs and on their refusal the suit was filed on 23.11.1981.

Defendant No.1 in the written statement took the preliminary objections that suit for declaration has not been filed within three years and is time barred. It was claimed that no cause of action accrued to the plaintiffs as no order dated 20.4.1973 was passed by the Additional Director of Consolidation. Further plea was taken that defendants have become owners by way of adverse possession. It was stated that some order was passed by the Additional Director Consolidation on 20.4.1963 and some changes were ordered. Mutation No.144 of 3.3.1966 was sanctioned but the

possession was not changed. Parties continued to possess their land as before and are in possession as owners without any interruption and have become owners by adverse possession. Defendants also denied that they took possession of the land belonging to the plaintiffs and that the same have been acquired by the Government and that they have received any compensation. The sales made by them were affirmed to be correct. It was stated that defendant Nos.4 to 13 are bona fide purchasers for consideration and without notice. Defendant No.3, while taking the same plea as by defendant No.1, stated that defendant No.3 is in possession of the suit land as tenant. He is not attorney of defendant Nos.1 and 2.

Defendant Nos.4, 6, 7, 8, 9, 11 and 12 in their separate written statements also pleaded that suit is time barred. They also denied the order dated 20.4.1973 stating that no such order was passed. They also took the same plea as taken by defendant No.1 and pleaded that they have become owners by way of adverse possession. They also affirmed that sales made to defendant Nos. 4 to 12 are legal and correct and that they are bona fide purchasers for consideration without notice.

Defendant No.13 in the separate written statement stated that sale of the portion of the suit land bearing khasra No.95 in favour of defendant No.13 is legal and correct and that he is a bona fide purchaser for consideration and without notice. At the time of sale, the possession was of Kuldip Singh @ Kuldev Singh, who sold the same along with other land vide sale deed dated 9.12.1969. Mutation has already been sanctioned on the basis of the sale deed.

In the replication, plaintiffs reiterated their case. From the pleadings, following issues were framed:-

i) Whether the plaintiffs are the owners of the suit land?

OPP

ii) Whether the suit is within limitation? OPP

iii) Whether the defendants have become owners by way of adverse possession? OPD

iv) Whether defendants No.4 to 13 are bonafide purchasers for consideration and without notice? OPD

v) Whether the plaintiffs are entitled to any amount by way of damages. If so, how much? OPP

vi) Whether the plaintiffs are entitled to the declaration and possession claimed? OPP

vii) Relief.

The learned Sub Judge 1st Class took issue No.1, 2 and 3 together and held that order dated 20.4.1973 of Additional Director Consolidation has not been brought on file. No sanctity is attached to the endorsement of the order of Additional Director as shown in the mutation Ex.P4. However, it was held that Additional Director Consolidation had passed an order on 20.4.1963 and that the land belonging to Kesho Dass and Kuldeep Singh was transferred to the plaintiffs but the possession of the land was never delivered to the plaintiffs. However, Kesho Dass and Kuldeep Singh defendants remained in possession of the said land continuously. The suit for possession is not within limitation as the order was passed in the year 1963 and suit was filed in the year 1981 and that the defendants have

become owners of the suit land by way of adverse possession. Accordingly, it was held that the plaintiffs are not owners of the suit land. Issue No.4 was decided holding that defendant Nos.3 to 13 are bona fide purchasers for consideration. Issue No.5 and 6 were also determined against the plaintiffs holding that they are not entitled to any damages or injunction and consequently, the suit was dismissed with costs.

Aggrieved by the said order, the plaintiffs preferred an appeal. The same was disposed of vide judgment and decree dated 5.2.1987 by the learned Additional District Judge, Gurdaspur. The learned Additional District Judge, Guraspur took up the issue Nos.1, 3 and 6 together. It was held that the order dated 20.4.1963 was challenged by way of Civil Writ Petition No.518 of 1966. The High Court vide order dated 24.9.1971 set aside the said order and remanded the case for fresh decision after giving proper hearing to the parties. It was held that no evidence was led that Consolidation Authority had passed an order on 20.4.1973. However, there is a note in mutation order Ex.P4 regarding the passing of the said order and re-affirming its earlier order dated 20.4.1963. It also relied upon the statement of the plaintiffs that their land was allotted to the defendants who took possession of their land. Therefore, it was held that in view of the note in the mutation order Ex.P4, in which earlier order appears to have been upheld by the Department, the defendants cannot be treated in adverse possession from the date of passing of the order dated 20.4.1963 Ex.P7. Before the appellate Court, the copy of the judgment of the High Court dated 24.9.1971

was proved by way of additional evidence. It was further held by the learned Additional District Judge, that the land of the plaintiffs was occupied by the defendants for which they have received compensation from the Government of India. The possession of the land which fell into the share of the plaintiffs was not delivered to them and is still in possession of the defendants. Therefore, it was held that plaintiffs are owners of the suit land and otherwise also in view of the principles of natural justice and equity, they are entitled to its possession. Therefore, issue Nos.1, 3 and 6 were determined in favour of the plaintiffs. It was held that from the date of order dated 20.4.1973, the suit is within limitation of 12 years. Therefore, issue No.2 was also determined in favour of the plaintiffs. It was further held that except Surjit Kaur defendant, defendant No.4 to 12 are unable to prove that they are bona fide purchasers for consideration and therefore, issue No.4 was partly decided in favour of the plaintiffs and partly in favour of the defendants. While deciding issue No.5, it was held that plaintiffs are entitled to compensation of Rs.4790/- as damages on account of use and occupation of the land. Consequently, the suit was partly decreed.

Against this order, defendant Kuldeep Singh as well as Kesho Dass Singh have filed separate appeals.

I have heard learned counsel for the parties and have also carefully gone through the file.

After going through the file and after going through the substantial questions of law, put forward on behalf of Kuldeep Singh appellant, following substantial question of law is framed:-

Whether the findings recorded by lower Court as well as lower appellate Court are perverse, against the record and based on mis-appreciation of evidence?

First of all, it will be seen that the plaintiffs claim that their land bearing khasra Nos. 114, 111, 112, 116, 108 and 115 was allotted to defendant Nos.1 and 2 and that the land of defendant Nos.1 and 2 bearing khasra No. 95, 94, 96 and 105 was allotted to them by the Additional Director Consolidation vide order dated 20.4.1973. However, defendant Nos.1 and 2 took the possession of land allotted to them but the plaintiffs were not delivered the possession of land. Therefore, they filed a suit on 23.11.1981. The perusal of the order of Additional Director Consolidation Ex.P7 dated 20.4.1963 shows that in fact, the suit land was allotted to the plaintiffs and the land bearing khasra Nos. 114, 111, 112, 116, 108 and 115 was allotted to defendant Nos.1 and 2. However, before the appellate Court by way of additional evidence, order of the High Court was produced, which shows that on the Civil Writ Petition filed by Nanku etc., challenging the said order dated 20.4.1963 and mutation No.144 sanctioned on 3.3.1966, the said order was quashed on 24.9.1971 and the case was sent back to Additional Director Consolidation for fresh decision after hearing the petitioners, private respondents and any other person. Before the High Court, there was no representation on behalf of the respondents. The operative part of the order is reproduced as under:-

“For the reasons recorded above, I allow this petition and quash the impugned order of the Additional Director, dated April 20, 1963)copy

Annexure 'A' to the petition) and send back the case to him for deciding it afresh after hearing the petitioners, the private respondents and any other interested person. As there is no representation on behalf of the respondents in spite of the service, there is no order as to costs."

No order of Hon'ble Supreme Court was produced to show that the said order of the High Court was challenged before the Apex Court and was ever varied. Consequently, the order dated 20.4.1963 and mutation No.144 sanctioned on 3.3.1966 were set aside.

Now reverting to the revenue record, the plaintiffs have placed heavy reliance upon the mutation Ex.P4, which was sanctioned on 3.3.1966 in which the order dated 20.4.1963 was given effect to. There is an entry in column No.13 of the said mutation wherein after the remarks that the changes have been made in view of the order of the Additional Director Consolidation dated 20.4.1963, then there is a separate entry below the said entry, which is translated as under:-

"Case No.276

*Date of decision of Additional Director Consolidation
Bahadur dated 20.4.1973*

Balwant Singh v. Dhian Singh"

I am of the considered view that the entry reproduced above, cannot be made the basis to determine the rights of the parties. First of all, whenever a mutation is sanctioned, it is complete at the time of sanctioning and no subsequent remarks are given, as

given in Ex.P4. Anyhow, if any remarks regarding some order of the Court or some changes are made, these are always made in the Jamabandi. There is no mention as to when and how these remarks were made and on which basis these were made. The said entry also does not show as to what was the decision of the Additional Director Consolidation in the order dated 20.4.1973. Surprisingly, order dated 20.4.1973, which is the basis of the suit, was never produced before the Court to enable the Court to examine as to what order was passed by Additional Director Consolidation and what rights were created in pursuance thereto.

Learned counsel for the respondent has argued that the file of the said case is missing. If it is so, the plaintiffs could lead secondary evidence regarding the same.

The learned Additional District Judge wrongly relied upon the said entry made in the mutation Ex.P4 to hold that the land of the defendants and the plaintiffs was allotted to each other. Therefore, in the absence of order dated 20.4.1973 and any other secondary evidence, signifying as to whether any such order was ever passed and what was the exact nature of the order, the said alleged order of 20.4.1973 cannot be made basis to determine the rights of the parties. Consequently, the findings of the lower appellate Court in this regard are to be reversed. Consequently, the findings of the lower appellate Court based on the order of 20.4.1973, passed by the Additional Director Consolidation, have to be reversed.

The copy of the Jamabandi for the year 1976-77 Ex.P3 shows that suit land stands recorded in the names of the defendants

and that the land bearing khasra No.114, 111, 112, 116, 108 and 115 etc. stands recorded in the names of the plaintiffs and recorded to be in possession of Defence Department. There is no entry in the Jamabandi regarding the order of the Consolidation Authority or delivery of possession to either party.

Another copy of the Jamabandi Ex.P6 shows the sale of the part of the suit land by some of the defendants who had raised the plea of bona fide purchasers. The plea of bona fide purchasers is to be considered only if it is found that defendant Nos.1 and 2 were no more owners of the suit land. Except these documents, there is no other document on file to show that the possession of the land of the plaintiffs was taken by the defendants and that same was later on acquired by the Defence Department and that any compensation was paid by the Government to the defendants on account of them being the owners. No copy of the Daily Diary Register of Patwari was produced to show the delivery of possession, acquisition of the land by the Defence Department or payment of compensation. Needless to say that the orders of such acquisition and payment of compensation were not produced on file. Therefore, whatever the plaintiffs claims in the suit is in air. The revenue record shows that the possession was never exchanged in pursuance to any order. Copies of subsequent Jamabandis were also not produced to show that possession of the land of the plaintiffs was delivered to the defendants. Therefore, so far as case of the plaintiffs is concerned, everything is in air. Lower Appellate Court decided the matter on the basis of surmises and conjectures. There is no basis to believe that

any order dated 20.4.1973 was passed by the Additional Director Consolidation and that vide the said order, the previous order dated 20.4.1963 was affirmed and that the land of the plaintiffs was allotted to the defendants and land of the defendants was allotted to the plaintiffs as claimed by the plaintiffs. Any entry of the said alleged order dated 20.4.1973 is not required to be made in mutation sanctioned way back in the year 1966. Moreover, there is nothing on file to show that any order whatsoever of any Consolidation Authority was enforced and the possession was exchanged. It being so, it has to be held that the plaintiffs have failed to prove that the suit land was allotted to them by the Additional Director Consolidation and that their land was allotted to the defendants and that the defendants were delivered possession of the land of the plaintiffs and further that the said land was acquired by the Defence Department of Government of India and that compensation for said acquisition was awarded to the defendants and they received the same. Therefore, the question of adverse possession, if any, will not arise. Since the order dated 20.4.1973 is not produced, the question of limitation to implement the said order will also not arise.

Learned counsel for the appellant has produced the authority Gurcharan Ram v. Tejwant Singh (died) through LRs and another, 2008(4) RCR (Civil) 266 and has placed reliance upon the following observations:-

“In Rohini Prasad v. Kasturchand, (2000) 3 SCC 668, it was observed by the Supreme Court that where the misreading of the evidence by the appellate Court leads to

*miscarriage of justice or its finding is based on no evidence and is perverse, the High Court will be within its jurisdiction to interfere in the finding of fact in the second appeal. Again, in **Kulwant Kaur v. Gurdial Singh Mann, 2001(2) RCR (Civil) 277: (2001) 4 SCC 262**, while defining the scope of interference by the High Court in the finding of fact recorded by the courts below, it was held that "In a second appeal a finding of fact, even if erroneous, will generally not be disturbed but where it is found that the findings stand vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an element of perversity involved therein, the High Court will be within its jurisdiction to deal with the issue." It was held that perversity itself is a substantial question of law. In **Hafazat Hussain v. Abdul Majeed, 2001(4) RCR (Civil) 334: (2001) 7 SCC 189**, it was held that non-interference by the High Court in concurrent finding of fact recorded by the lower courts is not an absolute rule of universal application. The finding recorded by the trial court as well as the first appellate court can be shown to be not only vitiated due to perversity of reasoning, but also due to some mis-reading of the material on record. Again, the Supreme Court in **Hero Vinoth (Minor) v. Seshammal, 2006(2) RCR (Civil) 677: 2006(1) RCR (Rent) 457: (2006) 5 SCC 545**, held that general rule is that the High Court will not interfere*

with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. Thus, it was held that there is an exception where this Court will interfere in the second appeal, where it is found that the conclusion drawn by the lower courts is erroneous being contrary, based on inadmissible evidence or arrived at by ignoring material evidence.”

Learned counsel for the appellant has further stated that it is a fit case where in the regular second appeal, interference in the findings of the lower Court should be made. There is no second opinion about the same. The present case is a fit case where from the discussion made above, it comes out that the findings of the lower appellate Court are based on no evidence and are based on surmises and conjectures and it is a fit case where these findings should be interfered into to avoid mis-carriage of justice.

Consequently, issue Nos.1 and 2 are determined against the plaintiffs. Issue No.3 becomes meaningless as the defendants are proved to be owners of the suit land. Therefore, the question of their adverse possession of over their own land will not arise. The follow up will be that the sales made by the defendant Nos.1 and 2 to defendant Nos.4 to 13 are held to be legal and valid and the

purchasers are to be held to be bona fide purchasers. Issue No.4 accordingly stands decided in favour of defendant Nos.4 to 13. As a result of the foregoing discussion, issue Nos.5 and 6 also stand determined against the plaintiffs.

As a result of the foregoing discussion, it is held that the judgment passed by the lower Appellate Court is perverse and based on mis-appreciation of evidence and rather based on no evidence.

Consequently, the appeals are allowed. The impugned judgment dated 5.2.1987 passed by the learned Additional District Judge, Gurdaspur stands set aside and suit of the plaintiffs stands dismissed with costs throughout.

30.11.2015
gk

(Kuldip Singh)
Judge