

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

RSA No.1081 of 1990

Date of decision: February 19, 2015.

Gurdial Singh etc.

... Appellants

v.

Virsa Singh

... Respondent

CORAM: **HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON**

Argued by: Shri M.L. Saini, Advocate, for the appellants.

Shri G.S. Dhillon, Advocate for the respondent.

Dr. Bharat Bhushan Parsoon, J.

Plaintiffs, appellants herein, had filed a suit for seeking a decree of permanent injunction restraining the defendants from interfering in their possession of the land in suit.

2. Concedingly, the land in suit was allotted to Smt. Manjit Kaur by the Rehabilitation Department under the Package Deal Property (Disposal) Act, 1976. It was purchased by the plaintiffs. Possession was allegedly delivered to them.

3. Defendant Virsa Singh was in possession of the suit land before allotment to Mrs. Manjit Kaur. He denied the case of the plaintiffs and claimed himself to be in possession.

4. To adjudicate rival claims of the parties, the lower court had framed the following issues:-

“1. *Whether the plaintiffs are owners in possession of the disputed property? OPP*

2. *Whether the plaintiffs are entitled to injunction prayed for? OPP*

*3. Whether no cause of action has arisen to the plaintiffs to file the present suit?
OPD*

4. Relief.”

5. On receipt of oral as well as documentary evidence from the parties, the lower court decided issue No.1 to the effect that till allotment in favour of Mrs. Manjit Kaur was not cancelled, the plaintiffs were owners of the disputed property. It was decided in favour of the plaintiffs. Issue Nos.2 and 3 were also decided in favour of the plaintiffs. Sequently, suit of the plaintiffs was decreed on 2.11.1987.

6. This judgment and decree of the lower court was challenged by defendant Virsa Singh in appeal. Application under Order XLI Rule 27 read with Section 151 CPC was also filed by the respondents at the time of arguments. Since it was not seriously contested, the same was allowed. Additional evidence was permitted to be led by the defendants. It was in the nature of payment of Rs.70/- as compensation for the standing crop on the land in suit on 30.6.1986. It was thus sought to be proved that payment of standing crop having been made to Virsa Singh, he was divested from the actual possession which then was delivered to the plaintiffs. The appellate court noticed that entry of khasra girdawri (Ex.P8) regarding possession of the plaintiffs was rather corrected in favour of appellant-defendant Virsa Singh by Assistant Collector First Grade, Dasuya vide order dated 20.10.1985. Report roznamcha (Ex.P6) dated 28.1.1986 was also referred to in this context.

7. The first appellate court held that appellant Virsa Singh rather continued to be in possession. The first appellate court reversed findings of the trial court on all the issues and accepting the appeal, suit of the plaintiffs was dismissed.

8. Now the plaintiffs are in regular second appeal. Following

substantial questions of law arise for determination by this Court in terms of Section 100 CPC:-

“1. Whether the judgment and decree passed by learned the first appellate court is against the law and evidence while failed to consider the physical possession of the appellant on khasra No.25/1-014 in view of the Ex.P-6 Rapat Rojnamcha and revenue record Ex.P-7 and P-8 and further the khasra girdawri from the year Sauni 1982 continue till the Sauni 2005 and jamabandi for the year 1986-87 and jamabandi 2000-2001 and jamabandi for the year 2010-11 which clearly shows the possession of the appellant for the date of sale deed dated 3.2.1986, when the possession was delivered by the vendor to the appellant?

2. Whether the civil court has got recorded its own evidence instead of relying upon the finding of the revenue authority to ascertain the question of actual physical possession, while relying a stray entry of khasra girdawri?

3. Whether the finding of the first appellate court to the effect that after 20.10.1985, the appellant has no record for taking over the possession while ignoring the revenue record Ex.P-6, P-7 and P-8 and other revenue record clearly proved the possession of the vendor Mrs. Manjit Kaur since 28.1.1986 and thereafter her attorney delivered the possession to the appellant on 3.2.1986 while depositing the value of the barseen crop of Rs.70/- on 30.1.1986?

4. Whether the finding of the first appellate court is the result of mis-reading of revenue record and the same deserves to be set at naught as per Ex.P-6 rapat roznamcha there is no mention with regard to non delivery of possession at the spot of the land in dispute?”

9. Arguments have been heard.

10. Admittedly, Ajit Singh, husband of Smt. Manjit Kaur, serving the indian Army had died in Indo-Pak war in the year 1971. The land in dispute was allotted to Smt. Manjit Kaur as a war-widow. Against that allotment letter, appellant Virsa Singh had preferred an appeal before the Sales Commissioner, Dasuya but his appeal was dismissed vide order dated 22.12.1986 (Ex.D1).

11. Allotment order in favour of Smt. Manjit Kaur is of 16.1.1986. Report roznamcha (Ex.P6) is clear that actual physical possession of 2 kanal 10 marla of land out of total land measuring 4 kanal 10 marla was given to

Smt. Manjit Singh through her attorney Diwan Singh. Wheat crops were standing in the remaining land measuring 2 kanal. Assessment of the standing crop was made. Value of standing crop was assessed at Rs.200/-. There was yet another parcel of land measuring 14 marla comprised in killa No.25/1 of rectangle No.22. Barseen crop was sown therein by Virsa Singh son of Havela Singh. Value of such barseen crop was assessed at Rs.70/-. Payment of the said amount was made. Report roznamcha (Ex.P6) testifies this fact. Jamabandi for the year 1981-82 (Ex.P7) also is relevant.

12. This allotment to Smt. Manjit Kaur was having restrictive covenant that she was not competent to sell the same for a period of 20 years. Before expiry of the said period, she had sold the land in piecemeals vide five sale deeds. These are Ex.P1 to P6. In short, entire land allotted to Smt. Manjit Kaur was sold by her in favour of the appellant-plaintiffs.

13. Finding of the first appellate court that possession of the land where standing crops of barseen was there and valuation thereof was assessed at Rs.70/- was not delivered to Smt. Manjit Kaur and thus the land could not have been delivered to the plaintiffs, is based on the premise that payment of Rs.70/- was not made.

14. This finding comes on misreading of recitals of report roznamcha Ex.P6. Even otherwise, application of the plaintiffs, then respondents under Order XLI Rule 27 read with Section 151 CPC for leading additional evidence was allowed in the first appellate court and the said evidence had been produced that payment of Rs.70/- as value of the barseen crop which was standing on the part of the land measuring 14 marla was duly deposited.

15. No doubt, mere deposit of the compensation amount *ipso facto* would not prove delivery of possession but there is no denying the fact that

report rozamcha (Ex.P6) clearly reveals that actual physical possession of such land was then delivered to Diwan Singh, attorney of Smt. Manjit Kaur, vendor of the plaintiffs when such payment for standing crops was paid to Virsa Singh.

16. There does not remain any dispute that the plaintiffs had then stepped into the shoes of Smt. Manjit Kaur. Entries in khasa girdwari (Ex.P8) also support and sustain the case of the appellant-plaintiff. There is absolutely no basis for reversal of entry on delivery of possession vide Ex.P6. Reference by the appellate court to order dated 20.10.1985, is of no consequence particularly when the same had been made at the back of the plaintiffs as also at the back of Smt. Manjit Kaur and her attorney.

17. Once the attorney Diwan Singh had come into possession on behalf of Smt. Manjit Kaur, delivery of possession back to Virsa Singh was to be proved by him as a fact on or before 18.1.1986 (Ex.P6) but there is no such evidence and thus order Ex.P5 of 20.10.1985, referred to by the first appellate court, *ipso facto* does not come to help of the appellant.

18. The first appellate court thus completely overlooked the entire documentary evidence and only relied on stray entry of order of 20.10.1985, for which absolutely there is no foundation and the said report is made clearly at the back of the main stake holders. Thus, the findings of the first appellate court are against the consistent and continuous revenue record which clearly shows possession of the appellants. Stray entry in favour of Virsa Singh in derogation of consistent possession of the plaintiffs, legally should not have been given any importance by the first appellate court. Rather, the revenue record (Ex.P6,P7 and P8) as also subsequent jamabandis and khasra girdawris clearly prove possession of the vendor Smt. Manjit Kaur since 28.1.1986. Thereafter, her attorney had delivered the possession to the appellant-plaintiffs on 3.2.1986.

19. Consequently, substantial questions of law are answered in favour of the appellant-plaintiffs. Accepting the appeal, reversing the impugned judgment of the first appellate court, judgment of the trial court is restored.

February 19, 2015.
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[Dr. Bharat Bhushan Parsoon]
Judge

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