

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 1295 of 1990 [O&M]

Date of Decision : March 23rd, 2015

Kalu Ram [dead] through LRs. and others

.... Appellants

Versus

Jai Narain [dead] through LRs.

.... Respondents

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

Present Mr. Sanjay Mittal, Advocate,
for the appellants.

Mr. P.R.Yadav, Advocate,
for the respondent.

Dr. BHARAT BHUSHAN PARSOON, J.

This Regular Second Appeal [for short 'RSA'] is directed against judgment and decree dated 30.7.1987 of the lower Court whereby suit filed by Jai Narain plaintiff, respondent herein [now deceased and represented by his LR's], for permanent injunction was decreed leaving the parties to bear their own costs which, on challenge made by the appellants-defendants, were confirmed vide judgment and decree dated 3.5.1990 by the Appellate Court below.

2 Claiming himself to be owner in possession of khasra No. 294 measuring 12 Marlas, a suit for permanent injunction was filed by respondent-plaintiff Jai Narain against the defendants – appellants herein, seeking restraint against them from interfering in his possession over the land in dispute [situated within the revenue estate of village Bahalan Kalan, Tehsil Narnaul] with further prayer not to raise any construction. It was also prayed that if any construction is raised, the same be demolished.

3. In the alternative, relief of possession being owner was also sought averring that the defendants were making all out efforts to dispossess the plaintiff.

4. On the contrary, the defendants had taken up a stand that not the plaintiff, but they were in possession of the suit property as owners and were living in the residential house which they had constructed since long i.e. earlier to consolidation of holdings in the village.

5. For adjudication of rival claims of the parties, on 16.12.1984 the lower Court had framed following issues:

1. Whether the plaintiff is owner in possession of the disputed property? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has no locus standi to sue? OPD
4. Whether the plaintiff is estopped from filing the suit by his act and conduct? OPD
5. Whether the suit of the plaintiff is liable to be dismissed with special costs u/s 35-A CPC? OPD
6. Relief.

6. After receiving oral as well as documentary evidence of the parties and providing hearing to their counsel, deciding all the issues in favour of the plaintiff, the suit was decided in his favour vide judgment and decree dated 30.07.1987.

7. In the appeal preferred by the defendants, appellants herein, District Judge, Narnaul had come to a definite finding that the plaintiff was owner in possession of the suit property, but since during the pendency of the suit, construction of the defendants was raised [which also found to be fresh one] notwithstanding the finding that defendants were in possession, their plea was not accepted. The appeal was dismissed with costs by the first Appellate Court vide judgment and decree dated 3.5.1990.

8. In the present RSA, it is claimed that notwithstanding the fact of possession of the defendants having been admitted, the appellants-

defendants even then were non-suited. It is averred that the suit of the plaintiff seeking alternative relief of possession itself showed that the plaintiff was on slippery ground, whereas, construction raised by the appellants-defendants was of yester years, which aspect was not noticed by the Courts below with the attention, it deserved. It is claimed that plea of adverse possession was sought to be taken by way of amendment in the written statement by the defendants-appellants herein, but the same was not allowed to be taken as it was observed that the same was to cause great prejudice to the plaintiff.

9. It is asserted that since the defendants have been held to be in possession of the suit land, the suit of the plaintiff for permanent injunction and in the alternative, for decree of possession, could not have been decreed by the Courts below.

10. During the course of arguments, it is claimed by learned counsel for the appellants-defendants that even if possession of the defendants [appellants herein] is considered on its own merits, it is sufficient to prove that it was established one and that it has matured into ownership. It is urged that the Courts below failed to frame an issue of 'adverse possession' causing great prejudice to the appellants.

11. Counsel for the respondent-plaintiff, repelling these arguments, has contended that when plea of adverse possession was not even taken in the written statement and the application for amendment of the written statement to introduce this plea during proceedings of the first appeal was dismissed, issue of adverse possession could not have emerged without any foundation having been laid by the appellants-defendants in the pleadings before the lower Court. It is urged that when right from very beginning, the defendants had come to the Court with a definite stand that they were owners in long established possession over the suit property and were having their residential houses constructed since long i.e. even earlier to taking place of consolidation of holdings in the village and this plea of the defendants could not be established on record by them with cogent and convincing evidence and rather, it was proved from the evidence brought on record before the lower Court by the respondent-plaintiff that the construction raised by the defendants was of

recent origin and the plaintiff had come with a consistent case right from the very beginning that the defendants were making all out efforts to dispossess them, and as such there was no substantial question of law emerging for determination by this Court and the present appeal is liable to be dismissed.

12. Pleadings of the parties are basis for formulation of respective legal horoscopes of the parties. No party can be allowed to travel beyond its pleadings. The plaintiff had approached the Civil Court with a definite stand that he was owner in possession of the plot in dispute, but the defendants were digging foundation and were out and out to raise construction so as to dispossess him. Though, the suit was for seeking a decree of permanent injunction against the defendants, in the alternative, prayer for possession of the suit property was also made, averring that the defendants were out and out to raise construction and if they were able to raise such construction then a decree of possession was also required to be passed.

13. To the contrary, the defendants had denounced ownership of the plaintiff specifically asserting ownership in them and further that they were in long established possession of two residential houses, one pucca and the other one being *kacha* and that the plaintiff had nothing to do with the suit property even earlier to the consolidation of holdings conducted in the village.

14. Documents pertaining to consolidation of holdings, viz. copy of proceedings and resolution in the relevant register [Ex.P2], copy of Khatoni Pamaish [Ex.P3] and copy of Naksha Haqdarwar [Ex. P4] leave no manner of doubt that plaintiff Jai Narain, respondent herein, right from the time of consolidation of holdings, was recorded as owner in possession of the suit property. Copies of Jamabandis for the years 1970-71 [Ex. P8], 1973-74 [Ex. P9], 1978-79 [Ex.P10], copies of khasra girdwari entries from Rabi 1979 i.e., Ex.P11, P12, P13 as also P6 and P7 consistently show ownership as also possession of plaintiff – Jai Narain over the suit plot .

15. Retired officer Kanungo, Ghisa Ram [PW-4] supporting the entries of the revenue record has further strengthened the case of the

plaintiff-respondent herein specifically deposing that the plot in dispute is in possession of the plaintiff as owner. Jamabandies have got presumption of truth. This presumption could not be rebutted by the defendants by leading any authentic evidence.

16. Testimony of Plaintiff – Jai Narain appearing as PW-1 is consistent with his pleadings and is corroborated by the consistent revenue entries in his favour. He is categorical that at the time of filing of the suit, the defendants had started digging the foundation and despite resistance offered by him, they continued, resulting in filing of the suit and during the pendency of the suit, they raised construction of two rooms; one kacha and one pucca and also raised boundary wall.

17. Despite pointed cross-examination on him, nothing adverse could surface. Rather genuine and truthful claim of the plaintiff is manifest through-out his cross examination effected by the defendants. Though, he conceded that construction of rooms had been raised as also mangers for cattle heads had been installed, it was, however, clarified by him that every thing from the side of the defendants had come up contemporaneous with the filing of the suit and during its pendency.

18. Mehar Chand, PW-2 is corroborative of the testimony of plaintiff Jai Narain. Support to the cause of the plaintiff-respondent herein has also unabatingly emerged from the testimony of draftsman Prahlad Sharma [PW-3], who proved site-plan [Ex.P1].

19. Out of the defendants, Shish Ram had entered the witness box as DW-3 before the lower Court insisting that one *kacha* room and another *pucca* one as also boundary wall, were raised by the defendants earlier to consolidation of holdings, but he stood belied by the revenue record. It is evident that had the defendants been in possession of the plot in question, consolidation documents, Ex. P3 and P4, would not have missed this fact. Absence of the defendants' name in the documents, Ex. P2 to P4, prepared during consolidation of holdings, is a clearly indicative that the defendants have no right, title or interest in the plot prior, during and after the consolidation of holdings.

20. When pointed cross-examination was effected on Shish Ram [DW-3], he first feigned ignorance about the entries in the revenue record. Though, he suggested that construction was raised prior and during the consolidation proceedings, he could not produce any receipts or cash memos regarding purchase of building material of the said period.

21. Even mason Mohar Singh [DW-4] had sweepingly deposed about raising of construction earlier to and during the course of consolidation of holdings, but neither could he disclose the number of the plot nor details thereof. He even could not point out the month or year of raising of construction. When the cross examination became close and grilling on him, he could not deny that the construction was raised during the pendency of the suit. He also could not deny that the plot in dispute belongs to plaintiff – Jai Narain.

22. Ram Niwas, yet another witness, who appeared to support the claim of the defendants as DW-5, drew just blank in his cross-examination and his pointed and scrutinizing cross-examination was sufficient enough to show that he was appearing as a witness against plaintiff Jai Narain because he had appeared as a witness against Jai Pal, brother of this witness in a case titled **Jai Pal Vs. Tota Ram**. Keeping in view this background, testimony of Ram Niwas [DW-5] even otherwise, is of no legal significance.

23. It would be pertinent to mention here that at the instance of the defendants, Shri Hukam Chand Yadav, Advocate was appointed as a Local Commissioner, who had then visited the spot. Appearing as DW-1, he had proved explandary site plan as Ex. DW-1B. His pointed cross-examination reveals that in his report, he had failed to give the age of construction existing on the spot including the rooms and boundary wall. Sequelly, the Court had appointed yet another Local Commissioner for the purpose of finding the approximate age of the construction. O.P.Mudgil, Sub Divisional Engineer, Provincial Sub Division No. II, PWD B&R Branch, Narnaul had visited the site on 4.3.1987 for this purpose and had submitted his report on 8.6.1987 wherein he had given categoric finding that construction had been raised over the suit land recently and in any case, was fresh one , the same having been made less than 5 years ago as

construction material used therein was fresh and even the doors and shutters had yet not been installed. The site was inspected by this Local Commissioner in the presence of the parties and there could not be any challenge to the same. In short, there is a clear evidence coming from neutral quarters that the construction raised by the defendants was contemporaneous and during pendency of the suit. No wonder, both the Courts below came to a definite finding to this effect and in addition, have also granted alternative relief of possession to the plaintiff.

24. It also emerges that during proceedings of the first appeal, the defendants tried to change the entire tenor and temperament of their defence when they sought to amend their written statement to bring in the plea of adverse possession. Since right from the very beginning, they had claimed that ownership and possession of the suit plot was resting with them even earlier to consolidation of holdings, change in the pleadings was substantive and in fact, was a very `intelligent` move to withdraw the pleas already adjudicated upon by the lower Court in the suit. Sequelly, amendment of the written statement for introducing the plea of adverse possession was rightly rejected by the first appellate Court.

25. Keeping in view the totality of facts and circumstances, it is clear that no question of law, much less of substantial nature needing determination by this Court is there in this appeal.

26. There is neither any mis-appreciation of facts or of evidence so as to call for any interference in the concurrent findings of fact recorded by both the Courts below. Sequelly, upholding the impugned judgments and decrees passed by the Courts below, this Regular Second Appeal is dismissed with costs. Decree sheet be prepared accordingly.

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

March 23rd, 2015
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1. Whether Reporters of local papers may be allowed to see the judgment? yes
2. Whether to be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes