

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

RSA No.844 of 1989

Date of decision: March 23rd, 2015.

Dharam Singh etc.

... **Appellants**

v.

Bhai Ka Bagh Cooperative Society

... **Respondent**

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

Argued by: Shri H.S. Bhullar, Advocate, for the appellants.

Shri B.S. Giri, Advocate for

Shri P.K. Juneja, Advocate for the respondent.

Dr. Bharat Bhushan Parsoon, J.

Bhai Ka Bagh Cooperative Society, hereinafter mentioned as the Society, had filed a suit seeking a decree for possession of land measuring 43 kanalas 8 marlas, detailed and described in the plaint against the defendants. One Pal Singh, a member of the Society averring authorization by resolution of the Managing Committee of the Society had brought the suit for the Society.

2. Possession of the defendants was proclaimed to be illegal alleging that the defendants had forcibly entered into the possession of the of the land in dispute on 30.4.1974 and did not vacate the illegal occupation despite having been asked to do so by the Society.

3. Defendants No.1, 3 to 5 had contested the suit. Denying existence of the Society and claiming that it was defunct, averring further that Pal Singh was neither the member of the Society nor had any competence or authority to bring the suit on behalf of the Society, it was

claimed that the suit property was sold by Balbir Singh Bedi, one of the co-owners thereof, to the defendants for a consideration of Rs.8,000/- in the year 1955. It was canvassed that the defendants were owners in possession since then. Taking various preliminary objections, claim set up by the Society was denounced.

4. In replication, the plaintiff Society had reiterated its claim set up in the plaint.

5. Following issues were framed by the lower court on 16.10.1985:-

1. Whether the plaintiff Society is a body corporate? OPP.
2. Whether Pal Singh has been duly authorized to institute the suit? OPP
3. Whether the plaintiff Society is the owner of the disputed property? OPP
4. Whether the plaintiff Society is entitled to get the possession of the disputed property? OPP
5. Whether the plaintiff Society is defunct? If so, its effect? OPD.
6. Whether there is no duly elected Management Committee of the plaintiff Society? If so, its effect? OPD.
7. Whether the plaint does not disclose any cause of action? OPD.
8. Whether the defendant has become owner of the disputed property by way of adverse possession as so alleged in the written statement? OPD.
9. What is the effect of non filing of complete Jamabandi of Khewat No.160/86? OPD.
10. Whether the suit is not within limitation? If so, its effect? OPD.
11. Relief.

6. Both the parties had produced oral as well as documentary evidence considering which, while hearing Counsel for the parties, the

lower court deciding issues No.3, 4, 8, 10 and 11 against the Society, non suited it, dismissing its suit on 10.4.1987. The decree had followed.

7. The Society went in appeal against the judgment and decree dated 10.4.1987 of the lower court, wherein it was inter-alia set up that plea of adverse possession of the defendants was neither tenable nor supported by the revenue record relied upon by the defendants. Questioning findings on issues No.3, 4, 8, 10 and 11, reversal of the decree was sought. Finding merit in the appeal of the Society, reversing findings on these issues, accepting the appeal, reversing the judgment and decree, the suit of the Society was decreed.

8. When called upon to satisfy this court about existence of any substantial question of law needing determination by this court in terms of Section 100 CPC, Counsel for the appellants has come up with such questions of law which are substantial in nature and call for determination by this Court. These are as under:-

- I. Whether the impugned judgment of the lower appellate court is illegal being contrary to the pleadings and evidence on the record?
- II. Whether the impugned judgment is illegal having been passed without reference to the issues?
- III. Whether the impugned judgment is bad in law having been passed without considering the finding of the trial court and saying how those were bad and unsustainable and reversing the same?

9. Hearing has been provided.

10. In this regular second appeal, questioning verdict of the first appellate court, it was claimed that fact of non-existence of the Society proved from record was overlooked by the first appellate court. Findings of issues No.1, 5 and 6 were also questioned.

11. Asserting adverse possession of the defendants, the appellants herein, it is claimed further that the revenue record was misinterpreted by the

appellate court below and their ownership was wrongly denounced. It is urged that the suit of the Society was barred by limitation and the Society, respondent herein, was required to prove the same to have been filed within time. Seeking reversal of the impugned judgment and decree of the first appellate court, acceptance of the regular second appeal is sought.

12. During the pendency of the appeal, consequent upon death of appellant Dharam Singh, his LRs were allowed to be brought on record. Similarly, consequent upon death of Harbans Singh, appellant No.2, his LRs were also allowed to be brought on record.

13. Copy of registration certificate (Ex.P2) reveals that the Society was registered on 29.7.1955. The appellants have not been able to point out any material or evidence in their favour to show that the Society had ever been liquidated or its registration was cancelled subsequently. Mere averments of the appellant-defendants that the Society had not been holding regular elections without any proof thereof, ipso-facto, is not a ground to denounce existence of either of the Society or of its managing committee. Bye-laws (Ex.P4) of the Society can not be questioned in their validity and legality by the appellants. Notwithstanding examination of Harkesh Singh DW2, Assistant Registrar of the Cooperative Society, Bathinda, no pointed finger could successfully be raised by the appellants to question existence of the Society or it having gone defunct thereafter.

14. Claim of the appellants that Pal Singh was neither member of the Society nor had been authorized by it to file the suit, also does not hold water because resolution (Ex.P3) of 7.2.1985 was not only proved on record and its validity has been established but even Pal Singh himself had entered the witness box as PW1 and had faced scrutinizing cross examination without any discredit to him. Rather, more the cross examination on this witness became closer and deep from the appellant-defendants, more clearly and transparently had emerged the case of the Society while annihilating stand of the appellant-defendants against the Society.

15. It is rather worth notice that findings of issue Nos.1, 2 5 and 6

which had been returned in favour of the Society by the lower court below, had been endorsed by the defendants, appellants herein, when the Society had gone in the first appeal against judgment and decree dated 10.4.1987 of the lower court. This change in stand by the defendants in addition to being an afterthought, is proved to be devoid of any merit and findings on issues No.1, 2, 4 and 6 of the lower court which had been approved by the defendants during proceedings of the the first appellate court below, rejecting the claim of the defendants, are found to have been correctly recorded.

16. It is worth notice that findings of the lower court on issues no.3, 4,8 and 10 held against the Society were over-turned by the first appellate court. Verdict of the first appellate court on this count is under challenge.

17. When we examine the case of the appellant-defendants, it is definite and certain, right from the very beginning that Balbir Singh Bedi one of the co-owners had sold the suit land to the defendants in the year 1955 for a sale consideration of Rs.8,000/-. But neither the date, nor the month of such sale is available in the pleadings of the defendants. There is neither any agreement to sell nor sale deed supporting their claim. Having not been able to substantiate their claim on this count, notwithstanding the fact of Balbir Singh having been brought in the witness box as DW1 and defendant Sarwan Singh entering the witness box as DW3 no help became available to the defendants.

18. Changing their course, heavy reliance was placed on judgment dated 6.8.1983 (Ex.D1) and decree (Ex.D2) vide which on admission of Tika Balbir Singh Bedi, claim of the defendants-appellants herein, as owners of the suit land, was accepted. The defendants failed to place on record copy of the plaint furnished by them along with copy of written statement produced by Balbir Singh Bedi. These foundational documents were required to support and sustain judgment (Ex.D1) and decree sheet Ex.D2. Concededly, value of the property in dispute which was more than

Rs.100/- and the decree sheet (Ex.D2) was rightly held to be of no probative value for want of registration in view of Section 17 of the Registration Act, 1908.

19. Stand of the defendants that an arbitrator had been appointed to settle the dispute between the parties and had rendered the award in favour of the defendants, which later was made rule of the court, is also not established. There is not even a whisper in evidence to support this claim of the defendants. Viewed from any angle, claim of the defendants-appellants herein neither of purchase of land from Balbir Singh is established nor of non-existent award having been made rule of the court, has been proved by them. Even decree (Ex.D2) in absence of registration, does not come to the rescue of the defendants.

20. Very heavy reliance has been placed by the defendants on khasra girdawri entries (Ex.D4) revealing possession of the defendants as vendees since 1973-74 and wherein their possession during 1977-78 is shown as co-sharer. During the course of arguments, it has not been disputed that khasra girdawri entries are not part of record of rights and are having no presumption of truth attached to these, as is the case of entries in jamabandies. Even otherwise, in their pleadings, possession of the defendants is not claimed by them to be permissive, but rather is asserted to be adverse to the original owners. The entries in girdawries thus also go against the case set up by the defendants.

21. Stand of the plaintiff Society on the other hand is clear and categorical. It is alleged by them that the possession was forcibly taken by the defendants on 30.4.1974. Testimony of Pal Singh PW1 in consonance with the averments in the plaint, could not be assailed by the defendants. When stand of the Society, respondent herein, is plain and transparent about its dispossession by the defendants with effect from 30.4.1974, the defendants have badly failed to establish their possession to be adverse to the true owners, i.e., the Society. Documentary evidence very heavily relied by the defendants rather fails them bitterly and shows their possession to be

permissive. Jamabandi for the year 1981-82 (Ex.P5), which has got presumption of truth, instead of supporting the claim of the defendants devastates it showing their possession to be permissive. No document worth reliance and having presumption of truth earlier than 1981-82 is on record. Had there been any such record showing adverse possession being available with the defendants, they were not to lag behind in producing the same. Plea of the defendants of adverse possession thus is of no merit.

22. The first appellate court was right in reversing findings of the lower court on issue no.10 as well in addition reversing findings on issues No.3, 4 and 8.

23. Consequently, impugned judgment of the lower appellate court is neither without reference to the issues framed by the lower court nor there is lack of discussion in reversing the findings on issue No.3 and other issues. The said impugned judgment and decree of the first appellate court has also not been found to be contrary to the evidence on record. Substantial questions of law are answered against the appellants holding the discussion and findings of the first appellate court to be correct on facts as also in law.

24. Finding no merit, this regular second appeal is dismissed with costs.

[Dr. Bharat Bhushan Parsoon]
Judge

March 23rd, 2015.
kadyan

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?*