

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No. 2777 of 2009 (O&M)

DATE OF DECISION : January 16, 2015

Yaadram

.....APPELLANT(S)

VERSUS

Vidha Devi and others

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sanjay Mittal, Advocate, for the appellant.
Mr. JP Sharma, Advocate, for respondents No.1 to 3.

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1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO

2. To be referred to the Reporter or not? YES/NO

3. Whether the judgment should be reported in the digest? YES/NO

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ARUN PALLI, J. (Oral)

The suit filed by the plaintiff was decreed by the trial Court vide judgment and decree dated 19.04.2005. Appeal preferred against the said decree failed and was dismissed on

15.12.2008. This is how, defendant No.1 is before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In a suit filed by the plaintiff-Manohar Lal, he prayed for a decree for injunction claiming that he and the proforma defendants were owners in possession, in equal shares, of the suit property measuring 3 kanals 11 marlas, comprised in Khasra No.7, situated in Village Bewal, Tehsil and District Mohindergarh, and defendants be restrained from causing any interference in his peaceful possession or raising any kind of construction over the suit property. It was averred that Jamabandi for the year 1995-96 and Mutation No.1310 dated 26.11.1997 showed plaintiff and proforma defendants to be owners in possession of the suit property. They had stored fuel, Roori, etc. in the suit land and the same was being used as Guwara. As defendants had no concern with the suit land and were still adamant to interfere in the peaceful possession of the plaintiff, thus, the suit.

In defence, it was pleaded, inter alia, that Parmanand, father of the defendants, and Chhotu Ram, father of the plaintiff, were real brothers as they were sons of Medha Ram. Though, the suit land was purchased in the name of Chhotu Ram from Sultan son of Ramkaran, but pursuant to a family settlement between the ancestors of the parties, Parmanand and Chhotu Ram were given equal shares in the suit property and a writing in this regard was effected. That being so, it was maintained that post family settlement, father of the

defendants was in possession of the suit property as owner and, thereafter, defendants were owners in possession thereof. Further, a Samadhi of Parmanand, father of the defendants, exists in the suit land and defendants tether their animals therein. Accordingly, defendants prayed for dismissal of the suit.

Trial Court, on an analysis of the matter in issue and the evidence on record, found that Jamabandi and also the revenue record produced by the plaintiff showed that Chhotu Ram son of Medha Ram was owner of the suit property and the same was exclusively owned by him. Post death of Chhotu Ram, the suit property was inherited by plaintiff and proforma defendants in equal shares. Accordingly, mutation (Exhibit P2), as regards the suit property, was sanctioned in favour of the heirs of Chhotu Ram. Resultantly, it was concluded that plaintiff and proforma defendants were owners in equal shares of the suit land. They were held to be in possession of the suit property. In reference to the report of the Local Commissioner, who vide report dated 30.05.1999 had found that the defendants had placed dung cakes and rubbish etc. over a part of the suit land, it was observed that the same was hardly of any consequence as Local Commissioner was never asked to opine as regards possession over the suit property. Thus, he exceeded his jurisdiction. Accordingly, it was observed that the question of possession was to be determined by the Court and no reliance could be placed upon the report of the Local Commissioner. Even otherwise, it was observed that mere act

of user such as throwing rubbish, placing dung cakes, etc. would not constitute possession and the same could never be regarded as an established possession. Since, plaintiff and proforma defendants were found to be exclusive owners in possession and were cultivating the suit land, thus, it was established that the suit property was owned and possessed by them. As regards writing (Exhibit DW5/B), vide which the suit property was alleged to have been equally divided between Chhotu Ram and Parmanand, it was observed that no demarcation of the land was mentioned therein, no particular khasra numbers were referred to and no date on which the said writing was executed was mentioned. Further, the document was not attested by any witness. Still further, the document in question was an unregistered document and was not written on a proper stamp paper, in terms of the provisions of Section 35 of the Indian Stamp Act, 1899 and, thus, could not be admitted in evidence. Therefore, plea of the defendants that they were owners in possession of $\frac{1}{2}$ share of the suit property remained unsubstantiated. Resultantly, the suit was decreed.

Being aggrieved against the said decree, defendants preferred an appeal. Ist Appellate Court reviewed the matter in issue, evidence on record in its entirety and, on an analysis thereof, found itself in concurrence with the same. Accordingly, the appeal was dismissed.

I have heard the learned counsel for the appellant and perused the records.

Learned counsel for the appellant simply seeks to

reiterate the submissions that were advanced before the courts below and rejected after due and comprehensive consideration. No other argument was advanced.

As opposed to this, learned counsel for the respondent submits that both the courts have concurrently found plaintiff and proforma defendants to be the owners and in actual physical possession of the suit property and, thus, the decree for injunction granted in their favour could not be interfered with.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Ex-facie, plaintiff prayed for a decree for injunction simpliciter. Needless to assert, for plaintiff to succeed, he was required to prove that he, indeed, was in possession of the suit property i.e. measuring 3 kanals 11 marlas. Jamabandi for the year 1995-96 (Exhibit P1) showed that Chhotu Ram, predecessor-in-interest of the plaintiff, to be owner in possession of the suit land. Post death of Chhotu Ram, the suit property was mutated in the name of his heirs i.e. plaintiff and proforma defendants, vide Mutation No.1310 dated 26.11.1997 (Exhibit P2). It is not disputed that since then, heirs of Chhotu Ram were shown to be the owners in possession of the suit property. Concededly, defendants failed to lead any cogent evidence to show that they ever entered possession of the suit property or even a part thereof. Report of the Local

Commissioner could hardly advance the case of the defendants as neither the Commission had the jurisdiction to determine possession of the parties nor he was authorised in this regard. Even otherwise, merely placing dung cakes, etc. over a portion of the suit land cannot be construed as possession in law, least an established possession. Their plea, that pursuant to a family settlement that was reduced into writing (Exhibit DW5/B), the suit property was divided in equal shares in favour of Chhotu Ram and his brother; namely, Parmanand and, thus, defendants were owners of $\frac{1}{2}$ share in the suit land, was equally misconceived. On a comprehensive consideration of the said document, it was recorded by the 1st Appellate Court that the same was wholly vague, lacked material particulars and was uncertain. Neither any measurement nor any dimensions of the land, that was purported to have been divided between Chhotu Ram and Parmanand were mentioned therein. No khasra numbers were mentioned. So much so, defendants even failed to plead as to when the said document was executed. No evidence as to when was the said writing executed was brought on record. Still further, nothing was brought on record to show that settlement being propounded was ever acted upon. That being so, plaintiff having proved that he along with proforma defendants were, indeed, the owners in possession of the suit property, a decree for injunction was rightly granted in their favour. Learned counsel for the defendant No.1/appellant could not point out as to how the conclusions that have concurrently been recorded by both the courts below were either contrary to

the position on record or suffer from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is, accordingly, dismissed.

JANUARY 16, 2015
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(ARUN PALLI)
JUDGE