

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.1536 of 2010 (O&M)
Date of Decision: 18.09.2015**

Ram Kishan and others

.....Appellants

Vs

Gugan Ram and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Pankaj Bali, Advocate
for the appellants.

Mr. Akshay Kumar Goyal, Advocate
for the respondent No.1 (b)

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

RAJ MOHAN SINGH, J.

[1]. Defendants are in appeal against judgment and decree dated 24.02.2010 passed by Additional District Judge (Fast Track Court), Bhiwani vide which the judgment and decree dated 07.04.2006 passed by Civil Judge (Junior Division), Charkhi Dadri has been set aside.

[2]. Plaintiff Gugan Ram filed suit for permanent injunction against the defendants for restraining them from creating any interference in the

possession of the plaintiff over the land measuring 108 sq. yards 34 inches over which, plaintiff has constructed his residential house.

[3]. Plaintiff and his brother Sita Ram had purchased land measuring 217 sq. yards 32 inches from one Ramla son of Bidda vide registered sale deed dated 30.12.1949 for a sale consideration of Rs.1000/-. Thereafter, a compromise was arrived at between plaintiff and Sita Ram to the effect that half of the land towards northern side would come to Sita Ram and remaining half i.e. 108 sq. yards 34 inches towards southern side would be that of the plaintiff. Sita Ram had constructed his residential house during the lifetime and after his death his legal heirs are living in his residential house.

[4]. Land measuring 108 sq. yards 34 inches as shown by letters 'ABCD' in the site plan and its dimensions is owned and possessed by the plaintiff and defendants has no concern whatsoever with the land in question. Plaintiff felt threat of dispossession and filed the suit.

[5]. On put to notice, the defendants contested the suit on customary pleas including the plea that defendant No.1 has become owner of the suit land by way of adverse possession. It was contended that the plaintiff is a real brother of defendant No.1. In the year 1949 all the four sons of Dhansi Ram namely Sita Ram, Ram Chander, Gudan Ram and Ram

Kishan constituted a Joint Hindu family. At that time, defendant No.1 Ram

Kishan and Ram Chander father of defendants No.3 and 4 were minors and land measuring 217 sq. yards 32 inches was purchased out of Joint Hindu Family fund. Plaintiff, defendant No.1, Sita Ram, Ram Chander and Dhansi were members of Joint Hindu Family at the time of purchasing of the land. The land in question was being used by all the family members of Joint Hindu Family till 1960. In the year 1960, the land was partitioned between the family members. Half share towards northern side of the land came to Sita Ram and Ram Chander in equal shares and remaining half share came to the shares of plaintiff and defendant No.1-Ram Kishan which is shown by letters 'ABCD' in the site plan. Thereafter, the suit land was again partitioned between plaintiff and defendant No.1. The land shown by letters 'ABCD' in the site plan of the defendants came to the share of defendant No.1 and the remaining portion or the property shown by letters 'DCBGFE' came to the share of the plaintiff. It was further contended that the plaintiff is living separately from defendant No.1 by constructing his house over the land depicting by letters 'DCBGFE' and the plaintiff has no concern with the land shown by letters 'ABCD' in the site plan of the defendants. Defendant No.1 claimed himself in exclusive possession of the land and has also become owner of the house by way of adverse possession.

[6]. After completion of the proceedings, trial Court framed following

issues:-

- “1. Whether the plaintiff is owner in possession of 108 sq. yards, 34 inches of suit land and he is entitled to the relief of injunction as prayed for? OPP*
- 2. Whether the suit land is property of Joint Hindu Family being purchased out of Joint Family fund, if so to what effect? OPD*
- 3. Whether the suit land has been partitioned in the year 1962 as alleged in the written statement, if so to what effect? OPD*
- 4. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 5. Whether the suit is not maintainable in the present form? OPD*
- 6. Whether the plaintiff has not come to the Court with clean hands? OPD*
- 7. Whether the suit is bad for mis-joinder and non-joinder of necessary party? OPD*
- 8. Relief.”*

[7]. Both the parties have led their respective evidence on the aforesaid issues. Trial Court decided issue No.1 by holding that admittedly Dhansi has four sons namely Sita Ram, Gugan Ram, Ram Kishan and Ram Chander. Sita Ram, Ram Kishan and Ram Chander have already expired. Defendant No.1 admitted that the sale deed was executed in the year 1949 in the name of Sita Ram and Gugan Ram.

Specific stand was taken by the defendants that suit land was partitioned in the year 1960. Half of the land came to the share of Sita Ram and Ram Chander towards northern side and the remaining half came to the share of plaintiff and defendant No.1 Ram Kishan. Defendants further took the stand that even this half share was partitioned between Ram Kishan and Gugan Ram in the year 1962 and they had constructed their respective portions. With reference to site plan the separate construction has been depicted by specific letters 'ABCD' in favour of defendant No.1 and 'DCBGFE' in favour of the plaintiff. The defendants have also pleaded with reference to Ex.D1/A and stated that construction raised by the plaintiff and defendant had been admitted by PW-1 in his cross examination to the effect that two rooms, one showl, one varanda, chowk are in existence and there is a grill.

[8]. During the pendency of suit, a Local Commissioner was appointed who gave his report that there is a wall which has been shown by letters 'EGF'. Local Commissioner also found constructed area which has been shown in Ex. D1/A. Local Commissioner in his report has admitted that there are two gates marked with 'A' and 'B' in the suit land. PW 2 also admitted in his cross examination that there are two gates in the disputed land. The evidence of Local Commissioner has found as a

matter of fact that the presence of two gates coupled with the statements

of DW 2, DW 3 and DW 4 corroborated the plea of defendants that front portion of the suit land is in possession of defendant No.1 and the remaining portion is in possession of plaintiff. The existence of two gates in the suit land is also suggestive of the fact that there was partition between the portions of plaintiff and defendant No.1. Even an application for amendment was moved by the plaintiff to the effect that defendants have raised wall over the suit land as shown by letters 'EGF' during pendency of the suit but the said application was not pressed by the plaintiff and the same was dismissed as withdrawn on 02.04.2004.

[9]. In view of aforesaid, once the plaintiff is not found in possession his suit for simplicitor injunction is not maintainable, accordingly, this issue was decided by the trial Court against the plaintiff. Under the issue No.2, trial Court found that the evidence led by the defendants is lacking to reveal that the property purchased vide Exs.P1 and P4 were from the Joint Hindu Family fund. Issue No.2 was accordingly decided against the defendants. Issue No.3 was also decided against the defendants on the basis of findings recorded under issue No.1 to the effect that the suit land is in possession of the defendant No.1 and the plaintiff. Defendant No.2 failed to prove that suit land was partitioned between him and plaintiff in the year 1962. Issues No.4 and 5 were decided against the plaintiff.

[10]. The findings under issue No.1 have been taken to be having

material bearing in the decision of these issues and it was held that plaintiff has no locus standi to file the present suit and therefore, the suit is not maintainable in the present form. Issues No.6 and 7 were not pressed by the defendants and accordingly, they were decided against the defendants. Resultantly, the suit of the plaintiff was dismissed vide judgment and decree dated 07.04.2006 by the trial Court.

[11]. Feeling aggrieved against the aforesaid judgment and decree, plaintiff, Gugan Ram filed appeal before Additional District Judge, Bhiwani. Lower Appellate Court reversed the findings of the trial Court and decreed the suit. Lower Appellate Court referred to the findings of the trial Court recorded in para No.17 of the judgment to show divergence on the point of possession of the plaintiff. Lower Appellate Court has relied upon the claim of the defendants when they claimed their possession over 43 sq. yards out of the suit property measuring 108 sq. yards and admitted plaintiff and his family members to be in possession of 65 sq. yards in the suit land. Lower Appellate Court has observed that two of the remaining brothers namely Sita Ram and Ram Chander have not come forward to prove the factum of family settlement or arrangement and in the absence thereof, family settlement cannot be presumed. Admittedly, plaintiff, Gugan Ram and Sita Ram purchased the land in question and therefore,

plaintiff was owner of 108 sq. yards. Lower Appellate Court

also observed that there is no material on record that Ram Chander and Sita Ram are in possession of remaining plot measuring 108 sq. yards by virtue of family settlement. In the absence of any settlement on record and proof thereof, all the four brothers cannot be presumed to have derived their alleged entitlement out of alleged family settlement.

[12]. As per report of the Local Commissioner there was a Katcha wall constructed between two partitions measuring 43 sq. yards and 65 sq. yards and the said wall became the bone of contention between the two brothers. On the basis of this report of Local Commissioner, defendants have pleaded that there is existence of two entrances on portions of 43 sq. yards and 65 sq. yards that amounted to partition and family settlement between two brothers.

[13]. Additional District Judge (Fast Track Court), Bhiwani observed that in the given circumstances, possession of defendants cannot be presumed to be of 43 sq. yards out of total 108 sq. yards. The report of Local Commissioner has made it explicitly clear that attempts were made to raise wall between two portions i.e ABCD in the site plan of Local Commissioner and the site plan produced on record by defendants Ex.D1/A. The site plan submitted by plaintiff Ex.P-3 did not show any existence of wall. The Lower Appellate Court held that no wall was in existence at the time of filing of the suit and the same has been raised

later on and therefore, defendants cannot be presumed to be in possession of 43 sq. yards of area being owner thereof, by way of any partition. Merely, because Ram Kishan and his family members were living with the owner of the suit property i.e. the plaintiff that itself cannot draw a line within the suit property on the ground of any family partition which is otherwise not proved on record. Lower Appellate Court accepted the appeal and decreed the suit of the plaintiff for permanent injunction.

[14]. At the time of admission of the appeal the contentions of the appellant were noted that Lower Appellate Court has failed to take into consideration factum of existence of wall from the last 40 years.

[15]. The appellants have formulated following questions of law in their grounds of appeal:-

- “1. Whether the judgment and decree passed by the Courts below are result of misreading of evidence?*
- 2. Whether the plaintiff can be allowed to take the benefit of the weakness of the defendants?*
- 3. Whether in the suit for permanent injunction the party has to prove that he is in possession of the land in dispute?*
- 4. Whether in the suit for permanent injunction finding of possession can be given merely on the basis of sale deed?”*

[16]. I have considered the rival submissions of both the sides.

[17]. It is a simplicitor suit for injunction based on possessory right. As per pleaded case of the plaintiff, property was purchased by him and Sita Ram vide registered sale deed 30.12.1949 for a consideration of Rs.1000/-. The total land was 217 sq. yards 32 inches. The property was thereafter, partitioned between plaintiff and Sita Ram on account of compromise. Sita Ram got 108 sq. yards 34 inches towards northern side and remaining portion came to the share of the plaintiff. The defendants in their stand took up the plea that the land was purchased out of joint fund of the Joint Hindu Family. Apparently, Ram Kishan and Ram Chander were minors at that time. Family partition took place in the year 1960. Half share towards northern side went to Sita Ram and Ram Chander in equal shares and the remaining half came to the share of plaintiff and Ram Kishan. According to defendants, there was further partition in this half share thereby, giving 'ABCD' portion in favour of the defendant No.1 and remaining 'DCBGFE' portion to the plaintiff. Both the sides have constructed their respective house on the earmarked portions. Local Commissioner as a matter of fact found existence of two portions having two separate gates, wall (EGF) has also been found by the Local Commissioner. The existence of two gates in the property having separate openings of the constructed sites is suggestive of exclusive possession of the party to the earmarked site having separate openings

in the form of separate gates. The report of Local Commissioner if read in conjunction with testimonies of defendants No.2, 3 and 4 would prove that the front portion of the disputed land is possessed by defendant No.1, whereas back portion of the suit land is possessed by the plaintiff. There are separate entrances to the property. Even the application made by the plaintiff to amend the plaint on 04.11.2002 vis-a-vis the raising of wall over the said land i.e. EGF during pendency of the suit was got dismissed as withdrawn and the fact to prove that the wall 'EGF' was constructed during pendency of suit remained unproved.

[18]. In view of aforesaid, once the property at the site are found to be in existence having different openings, there is a wall EGF in existence, therefore, for the purposes of injunction, it cannot be observed that the property as a whole has been in exclusive possession of the plaintiff, rather two earmarked sites are proved on record having separate entrances and a wall in between. Therefore, the testimonies of DWs to the effect that front portion is possessed by defendant No.1 and back portion is possessed by the plaintiff is a result of lawful apprehension of evidence on record. Question No.1 has been framed on its logical meaning.

[19]. The Lower Appellate Court has drawn conjectures on the issue of report of Local Commissioner and non-joining of families of two

remaining brothers. Once it has come on record that the property was partitioned in the year 1960 on account of family partition and half of the property towards northern side went to the share of Sita Ram and Ram Chander and the remaining portion came to the share of plaintiff and defendant No.1, therefore, the dispute vis-a-vis half share inter se between plaintiff and defendant No.1 is to be seen.

[20]. As per evidence on record, this property has been found to be in two distinct modes i.e one earmarked site is proved to be in possession of the defendant No.1 and the remaining site is proved to be in possession of the plaintiff. Therefore, question No.1 as formulated by the appellants has to be answered in positive to held that judgment and decree passed by the Lower Appellate Court is the result of misreading of evidence. Question No.2 is to be answered on the basis of material available on record. Plaintiff cannot take benefit of weakness of the case of defendants. It was the duty of the plaintiff to bring on record that there was no family settlement. Plaintiff could have examined legal heirs of remaining two brothers. Plaintiff has to prove his possession over the entire 108 sq. yards 34 inches of land in one composite slot. The evidence on record has come to show fabrication in this chunk of land to the extent of 43 sq. yards and 65 sq. yards having different openings. The oral evidence on record made it clear that the defendant No.1 is in

possession of defined portion of land and plaintiff is also in possession of defined portion of remaining chunk of land.

[21]. Since the property has been found to be separately existing, therefore, plaintiff cannot claim injunction simply on the ground that originally property was purchased by him and Sita Ram in the year 1949. No rebuttal has come on the aspect of a Joint Hindu Family property and family settlement arrived at between all the four brothers in the year 1960. Therefore, question No.2 has to be answered in favour of the appellants-defendants to held that the plaintiff cannot take benefit of weakness of defendants, rather plaintiff has to stand on his own legs. Question No.3 is found to be negative. Plaintiff could not prove his exclusive possession over 108 sq. yards 34 inches of land, rather evidence on record shows that this property has been demarcated in two clear chunks of land, one belongs to defendant No.1 and remaining belongs to the plaintiff. The plaintiff could not prove possession over the portion of the land on which defendant No.1 is found to be in possession. Question No.4 does not arise at all. It is pertinent to mention here that no findings have been given solely on the basis of sale deed, rather findings have been given on the basis of family settlement arrived at between the parties in the year 1960. Thereafter, further dimension of the land have been made in which

one chunk of land came to the share of defendant No. 1 and the

remaining chunk of land came to the share of plaintiff. With reference to evidence on record oral as well as documentary, this fact has been proved that the land measuring 108 sq. yards 34 inches has two openings, having one separate wall in between. Both the portions are constructed portions. Front portion belongs to defendant No.1 and back portion belongs to plaintiff.

[22]. In view of aforesaid, simplicitor suit for injunction is not maintainable and the trial Court has rightly dismissed the suit on the basis of available material.

[23]. In view of above, I am of the considered opinion that the plaintiff cannot seek permanent injunction vis-a-vis the portion which fell to the share of defendant No.1 in which he has constructed a house. Consequently, the judgment and decree dated 24.02.2010 passed by Additional District Judge (Fast Track Court), Bhiwani are set aside and judgment and decree dated 07.04.2006 passed by Civil Judge (Junior Division), Charkhi Dadri are hereby restored and the suit of the plaintiff for permanent injunction stands dismissed, leaving both the sides to bear their own costs.

September 18, 2015

prince

(RAJ MOHAN SINGH)
JUDGE