

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1580 of 2010 (O/M)
Date of decision : 14.10.2015

Krishan Kumar and others

..... Appellants

Versus

Amar Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vaneet Soni, Advocate, for the appellants.

Mr. Jai Vir Yadav, Advocate, for respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

Impugned in the present regular second appeal is the judgment and decree dated 30.10.2009, passed by the learned Additional District Judge, Narnaul, reversing the judgment and decree dated 24.1.2006, passed by the learned Additional Civil Judge (Senior Division), Narnaul, by partly allowing it and thereby decreeing the suit of the plaintiff (respondent herein) and restraining both the parties from raising any construction in the portion, shown as red and yellow in site plan (Ex.DW2/A). The defendants/appellants were further directed to demolish the wall

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raised by them at the time of filing of the suit by the plaintiff/respondent. The parties were left to bear their own costs.

Brief facts of the case are that a suit was brought by Deen Dayal (now deceased) through his LRs for restraining the defendants/appellants from interfering in the property, boundaries of which have been fully detailed in head note of the plaint. It was claimed that Sheonath was owner in possession of the suit property. He had executed mortgage deed in the year 1922 in favour of plaintiff, Kishori Lal and Mangtu Ram for Rs. 51/-. The possession was also delivered to the mortgagees. Thereafter, Kishori Lal (brother) died leaving behind no LRs. Therefore, the plaintiff/respondent being the sole LR of Kishori Lal is owner in possession of the property in question. Neither Sheonath nor his LRs redeemed the mortgage. Therefore, the plaintiff/respondent has become the owner in possession of the suit property by lapse of time. It was further averred that the plaintiff/respondent has constructed his house over the property in question about 30 years ago and is residing there alongwith his family. The defendants/appellants have no concern, title or interest in the same, but are still interfering in the disputed property.

On the other hand, the defendants/appellants claimed that the plaintiff/respondent has wrongly added land of the answering defendant, while showing the boundary wall of the

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property belonging to Sheonath son of Har Narain. Infact, the answering defendant had raised construction of about 6 feet wall in height towards Northern side and had also filled foundation on remaining three sides. He has been using this property for tathering cattle etc. The defendant alongwith his brother had purchased this property from Lal Chand through sale deed dated 12.9.1970. After purchasing the joint property, the defendant and his brother got partitioned the same and the property in question came to the share of answering defendant. Since then, he is the owner in possession of the same. The defendant has also put dry bricks upto 13 feet in length on Eastern, Northern and Southern side. The defendant is owner of Gawara bounded as East : Gawara of Umrao son of Nandram; West : house of the plaintiff. It was further claimed that there exists a passage on all the three sides and that neither Sheonath was owner of the disputed property nor he ever mortgaged the property to the plaintiff, his brother Kishori Lal and his father.

The lower Court framed the following issues :-

1. Whether the plaintiff is owner in possession of the suit property as alleged ? OPP
2. Whether the defendant had purchased the suit property from Lal Chand, vide sale deed dated 12.9.1970 as alleged ? OPD
3. Whether the plaintiff is guilty of concealment of facts, if

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so to what effect ? OPD

4. Whether the suit of plaintiff is not maintainable ? OPD
5. Whether the suit is bad for non-joinder of necessary parties as alleged ? OPD
6. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
7. Whether the defendant is entitled for special costs from the plaintiff u/s 35A CPC ? OPD
8. Relief.

The lower Court recorded the findings that the plaintiff/respondent has not become the owner of the property in question by lapse of time. The lower Court further observed that the dispute is only regarding the land measuring 12x12 feet, which is adjacent to the house of one Umrao Singh son of Nandram. When the plaintiff/respondent purchased the property, he had also obtained scaled site plan (Ex.DW1/A) relating to Gawara, situated in village Balaha Kalan from Lala Ram son of Chander Bhan. The defendant has produced the site plan (Ex.DW2/A), showing the location on which the land measuring 12x12 feet is in existence, as per the dimensions given in the sale deed dated 12.9.1970. The lower Court further observed that the plaintiff/respondent had given the wrong dimensions of property in question. Thereafter, he filed an application under Order 6 Rule 17 CPC on 20.3.1996 for

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amendment of the plaint, which was allowed. Despite this fact, the plaintiff/respondent failed to disclose correct area and dimensions of the land in dispute, as per the site plan (Ex.P2). The plaintiff/respondent did not show the Nohra of Umrao Singh son of Nandram, Nohra of Inder Lal and Hari Singh in his site plan (Ex.P2). Therefore, it indicates that the plaintiff/respondent wants to grab the property under the garb of alleged mortgage deed (Ex.P3). It was further observed that the defendant had duly purchased the land measuring 12x12 sq. yds. from Lala Ram through sale deed in the year 1970. Therefore, the suit was dismissed.

The lower appellate Court observed that the site plan (Ex.DW2/A) is not duly proved by the defendant in any manner. The lower appellate Court held that the plaintiff has proved his possession and accordingly the suit was decreed.

The following substantial question of law is framed by this Court for disposal of the present appeal :-

“1. Whether the findings recorded by the lower appellate Court are perverse and against the record ?”

I have heard the learned counsel for the parties and carefully examined the record.

It comes out that both the Courts below have found that the plaintiff/respondent has failed to prove that he has become the owner of the suit land by lapse of time on account of the fact that the

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mortgaged land was not redeemed. The mortgage deed (Ex.P3) is placed on file and the Hindi translation thereof is Ex.P4. In the mortgage deed, the boundaries of the mortgaged property are not given. It is merely mentioned as one Gawara. Therefore, from the said mortgage deed, it cannot be made out that the plaintiff has got the possession of the disputed property on account of mortgage. It is to be noted that in the amended plaint, the plaintiff has clearly mentioned the boundaries of the property in his possession on account of mortgage as under :-

East : rasta duly purchased by Jeeva Ram now in possession of his son Shimbu etc. ;

North : Patwarkhana ;

South : Nohra of Shri Kishan son of Ram Karan, now in possession of son Bhagta son of Mahasukh son of Ram Karan.

However, the mortgage deed does not mention such boundaries. The self-serving site plan (Ex.P1) produced by the plaintiff will not prove his possession. The plaintiff has come to the Court. It is for him to prove his case. The lower Court has referred to the sale deed (Ex.DW3/A), put forward by the defendants, vide which they had purchased the following property from Lal Chand :-

“East : House of Hari Singh

West : Land of Sheochand Etc.

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North : House and Guwara of Deen Dayal son of Bhagta
and house Jeeva

South : Land of Sheolal etc..”

The lower Court has observed that infact the dispute is regarding area 12x12 feet and under the garb of mortgage deed, the plaintiff wants to grab the land forcibly.

I am of the view that it was for the plaintiff to prove his exclusive possession over the property mentioned in the plaint. He claims possession over the land in question on the basis of mortgage deed (Ex.P3), as mentioned above. However, he has failed to prove that he has got the possession of the disputed land, mentioned in the plaint, on the basis of mortgage deed. Therefore, the lower Court had rightly held that the plaintiff has failed to prove his exclusive possession over the suit land and rather, he had failed to mention the correct dimensions of the disputed property. The relief of injunction is discretionary, which can be declined when the material facts are concealed. The lower Court can otherwise refuse to exercise the discretion. In these circumstances, I am of the view that the lower appellate Court acted illegally and in perverse manner in setting aside the well reasoned judgment and decree of the lower Court. Accordingly, the impugned judgment and decree dated 30.10.2009, passed by the learned Additional District Judge, Narnaul, is set aside and the judgment and decree dated 24.1.2006,

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passed by the learned Additional Civil Judge (Senior Division),
Narnaul, is restored. Consequently, the suit of the
plaintiff/respondent stands dismissed.

The present appeal is accordingly allowed.

(KULDIP SINGH)
JUDGE

14.10.2015
sjks