

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

RSA No.1623 of 2010(O&M)
Date of decision: 13.01.2015

Baldev Krishan and others

...Appellants

Versus

Inderjit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Malkeet Singh, Advocate for the appellants.
Mr. Sarju Puri, Advocate for the respondent.

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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was decreed by the trial court vide judgment and decree dated 17.02.2007. Appeal preferred against the said decree failed and was dismissed on 26.08.2009. This is how, defendants are 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 short, in a suit filed by Inderjit Singh, he claimed a decree for permanent injunction, restraining defendants from interfering in his peaceful possession over a land measuring 9M-1S-5SF Sarsahi i.e. plot bearing No.Ura/4, that was circled by two constructed boundary walls, big heap of dher and big heap of circle of bricks etc. And was bounded on

all four sides, as depicted in the plaint and site plan appended with the plaint. It was averred that plaintiff happened to be a resident of village Naura, and even his father and brother were also the residents of the same village. Plot No.Ura/2 was transferred in favour of his father on the basis of possession by Tehsildar Sales (Mahal). And likewise, plot No.Ura/3 was transferred in favour of brother of the plaintiff. Both the plots i.e. Ura/2 and Ura/3 were situated on the eastern and southern side of suit property i.e. Ura/4. He claimed to be in possession of the suit property for the last more than 12/14 years and thus, applied for transfer of suit property to Tehsildar Mahal, Nawanshahr, on 19.02.1999, as the suit property was owned by custodian/ Central Government. On a spot inspection that was carried out by the official of the revenue department, plaintiff was found to be in possession of the suit property. It was maintained that plaintiff had planted trees and raised boundary wall around the suit property and even constructed pucca khurlies and installed Toka machine etc. therein. As defendant No.4, in connivance with the other defendants, threatened to forcibly dispossess the plaintiff and demolish Toka machine etc., thus, the suit.

In defence, it was pleaded, inter alia, that plaintiff had no right, title or interest in the suit property. It was maintained that the land in question was in possession of the Gram Panchayat and it had even raised a boundary wall.

Plaintiff was not in possession even a part of the suit property. It was averred that no spot inspection was ever carried out in presence of the defendants and thus, report, if any, was not in conformity with the position that exists at the spot. Further, as plaintiff never entered possession of the suit property, therefore, there was no occasion of his forcible dispossession at the instance of the defendants. Accordingly, defendants prayed for dismissal of the suit.

Trial court, on a consideration of the matter in issue and evidence on record, found that plaintiff duly proved site plan (Ex.P1) and also copy of the application, he had moved for transfer of the suit property as Ex.P2. Report made by the revenue official, as regards his possession, was also proved as Ex.P3. It was observed that plaintiff was comprehensively cross-examined by the defendants, but still nothing could be extracted from his testimony that could show that either the Gram Panchayat was in possession of the suit property or was owner thereof. So much so, during the pendency of the suit, the suit property was allotted to the plaintiff, pursuant to a conveyance deed dated 19.01.2004 (Ex.PX), executed through Tehsildar Sales, Mahal. Therefore, it was observed that the document clearly proved possession of the plaintiff over plot No.Ura/4. Shiam Singh (PW2) testified in his statement that he has seen the plaintiff being in possession for the last around 15 years. Defendant Baldev Krishan, who appeared as

DW1, admitted in his cross-examination that the property of the defendants adjoin the suit property. Thus, it was observed that the property of Gram Panchayat was separate from the suit property. On an analysis of the evidence on record, it was concluded that defendants had failed to prove that suit property belonged to Gram Panchayat Village Naura. Likewise, no cogent evidence was led by defendants to prove that Gram Panchayat was ever in actual physical possession of the suit property. On the contrary, evidence led by plaintiff revealed that he was not only in actual physical possession of the suit property, but had also become owner thereof. Resultantly, the suit was decreed.

Being dissatisfied with the decree, defendants preferred an appeal. First appellate court reviewed the matter in issue, evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial court and the findings recorded in support thereof. Accordingly, the appeal was dismissed.

I have heard learned counsel for the parties and perused the RSA paper book.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. All what he urged is that plaintiff Inderjit Singh admitted in his cross-examination that during the pendency of

the suit, he was dispossessed from a part of the suit property i.e. 1½ marla, therefore, suit of plaintiff, as regards the entire suit property, ought not to have been decreed.

As opposed to this, learned counsel for the respondent submits that both the courts below concurrently found plaintiff to be in actual physical possession of the suit property. And pursuant to a conveyance deed dated 19.01.2004, he has even acquired title thereto. On the contrary defendants have failed to show that they were either the owners or in possession of the suit property. Thus, he submits that decree being assailed does not warrant any interference.

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. Needless to assert, for plaintiff to be entitled to a decree for injunction, he was required to prove that he indeed was in actual physical possession of the suit property. Plaintiff claimed himself to be in possession of the suit property for the past more than 12/14 years. He had moved an application (Ex.P2) for transfer of the suit property in his favour to Tehsildar Mahal, Nawanshahr, on the basis of his possession. Consequently, on a spot inspection carried out by the revenue official, plaintiff was found to be in actual physical possession of the suit land.

Report, submitted by the revenue official, in this regard, was duly proved on record as Ex.P3. Further, plaintiff indeed being in actual physical and settled possession of the suit land, a conveyance deed dated 19.01.2004 (Ex.PX), was executed in his favour. Conveyance deed (Ex.PX) was never questioned or assailed by defendants at any stage. Concededly, defendants never claimed any title qua the suit property. Their plea that they were in actual physical possession of the suit property remained completely unsubstantiated on record. Nothing was brought on record to show that defendant-Gram Panchayat ever entered possession of the suit land. So much so, neither the Sarpanch nor any official of Panchayat stepped into the witness box to prove the claim of the Gram Panchayat. The submission being advanced by learned counsel for the defendants (appellants), that plaintiff admitted in his cross-examination that he was dispossessed from a part of the suit property i.e. 1½ marla and was thus, not entitled to injunction qua the entire suit property, also lacks conviction. This was never the case of the defendants that plaintiff though in possession of the suit property, but was subsequently dispossessed by the defendants from a part thereof. Plaintiff having been found to be in actual physical possession of the suit property and having acquired title thereto, any such statement by the plaintiff pales into insignificance particularly when defendant-Gram Panchayat has failed to prove any right,

title or interest therein. That being so, the decree being assailed in the instant appeal does not warrant any interference. Learned counsel for the appellants 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 suffered 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. Appeal being devoid of merit is, accordingly, dismissed.

January 13, 2015
Rajan

(Arun Palli)
Judge