

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No. 3639 of 2010 (O&M)

DATE OF DECISION : February 20, 2015

Parkash Chand

.....APPELLANT(S)

VERSUS

Tej Ram etc.

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE ARUN PALLI

**Present: Mr. Randeep Singh, Advocate, for
Mr. Vipin Mahajan, Advocate, for the appellant.**

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

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ARUN PALLI, J. (Oral)

Suit filed by the plaintiffs was dismissed by the trial Court vide judgment and decree dated 30.07.2007. Appeal preferred against the said decree failed and was dismissed on 12.11.2009. This is how, plaintiff No.1-Parkash Chand 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.

Plaintiffs prayed for a decree for possession, on the basis of title, of land marked as IJRC, that was alleged to be under illegal possession of defendant No.2-Kewal Ram, and land marked as LMNG, that was alleged to be in unauthorised possession of defendant No.1-Tej Ram, as described in site plan appended with the plaint. It was averred that the plaintiffs happened to be the owners of the suit property and the suit land was a part of the residential house, Haveli and a courtyard measuring 3 kanals, comprised in Khewat No.87 (9-6), purchased, vide sale deed dated 13.12.1993, from Jagdish Mitter son of Durga Dass. It was averred that the plaintiffs even constructed a house and also a Haveli upon a portion of the said land and some space i.e. IJRC and LMNG, was left vacant, as depicted in red colour, in the site plan. It was maintained that defendant No.2 i.e. Kewal Ram, had forcibly entered possession of a portion marked as IJRC and defendant No.1 i.e. Tej Ram had unauthorisedly occupied the portion marked as LMNG in the year 1997. As defendants No.1 and 2 had no right, title or interest in the suit land, thus, they were liable to restore possession to the plaintiffs. Since, despite having requested on numerous occasions, defendants refused to acknowledge the claim of the plaintiffs, thus, the suit.

In defence, it was pleaded, inter alia, that land measuring 9 kanals 6 marlas, comprised in Khewat No.87 (9-6) was reserved for Abadi Bazigarian during the consolidation proceedings in the village, as reflected in the Register Karwai

Istemal. And Jagdish Mitter son of Durga Dass, who purported to be the owner of the suit property, had, indeed, no right, title or interest therein. In fact, he had illegally got a mutation sanctioned in his favour and the Bazigars had moved the Deputy Commissioner for cancellation of the mutation and the alleged sale deed. And also for registration of a criminal case against all those who had fraudulently tried to grab the property that was allotted to Bazigars for Abadi Bazigarian during consolidation proceedings. And prior to the filing of the present suit, father of the plaintiffs had filed a similar suit claiming himself to be the owner of the suit property, but the same was dismissed as withdrawn. The sale deed dated 13.12.1993, being propounded by the plaintiffs, was alleged to be illegal and void. It was maintained that the defendants had constructed their houses over the suit land 40 years ago, after consolidation proceedings were carried out.

On a due consideration of the matter in issue and the evidence on record, the courts below found that the plea of the plaintiffs that their father-Chhinda Ram had purchased the suit land from Jagdish Mitter and Om Parkash was hardly of any consequence. Chhinda Ram, had filed a suit against defendants Kewal Ram and Tej Ram qua the suit property, vide amended plaint (Exhibit D3), and the same was dismissed as withdrawn. In fact, Chhinda Ram admitted in his cross-examination (Exhibit D4) that there were 7/8 houses of Bazigars in Village Kalijpur and those houses were constructed upon a land measuring 9 kanals 6 marlas, out of which he had purchased the suit

property. Further, the boundaries of the suit land, as depicted in the cause title of the plaint, did not tally with sale deed (Exhibit P1). An analysis of Exhibit P1, showed that the suit property was bounded on the North side by passage, South : ownership of the owner, East : road and West : ownership of the owner. Whereas, in the cause title of the plaint, the suit land was bounded on the North side by a road, South : House of Teju Ram, East : Road and West : plot of Gopal Singh. In the site plan, the area that was purportedly encroached by the defendants was also not reflected in figures. Nothing was brought on record to prove as to how the plaintiffs or Jagdish Mitter and Om Parkash were the owners of the suit property. In fact, Exhibits D1 and D2 i.e. Karwai Istemal, revealed that in the column of ownership, the suit land i.e. 9 kanals 6 marlas, was shown to be the ownership of Abadi Bazigarian. That being so, it was concluded that the plaintiffs completely failed to prove that the land marked IJRC and the site marked as LMNG, was illegally and forcibly possessed by Kewal Ram and Tej Ram. Plaintiffs failed to lead any evidence to show as to on which date and in whose presence defendants Kewal Ram and Tej Ram had forcibly occupied the suit land. And since Om Parkash (PW-1), conceded in his cross-examination that the Bazigars had constructed their houses on a land measuring 9 kanals 6 marlas about 40 years ago, present suit filed by the plaintiffs on 28.02.2003 was barred by time. Resultantly, the suit was dismissed and even the appeal preferred against the said decree failed.

I have heard the learned counsel for the appellant and examined the R.S.A. 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. No other argument has been advanced.

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 the plaintiffs to be entitled to a decree for possession, they were required to prove that they, indeed, were the owners of the suit land. Plaintiffs purported to have title in the suit property, pursuant to sale deed dated 13.12.1993. An analysis of the sale deed dated 13.12.1993 (Exhibit P1), revealed that the boundaries of the land, that was subject matter of the said sale deed, do not match with the boundaries of the suit property, as depicted in the cause title of the plaint. So much so, Exhibits D1 and D2 i.e. Karwai Istemal, proved that in the column of ownership, the suit land i.e. 9 kanals 6 marlas, was shown to be the ownership of the Abadi Bazigarian. Apparently, plaintiffs failed to prove their title qua the suit land. Further, case set out by the plaintiff was that they had inherited the suit property from their father i.e. Chhinda Ram, who, in turn, had purchased the same from Jagdish Mitter and Om Parkash, however, suit filed by none other than Chhinda Ram, against defendants Kewal Ram and Tej Ram, qua the suit

property was dismissed as withdrawn. Nothing was brought on record to prove as to when, how and in what manner, the defendants illegally encroached upon the land marked as IJRC and the site marked as LMNG. Once, plaintiffs failed to prove their title, they could not claim a decree for possession.

Learned counsel for the appellant could not point out or show as to how the conclusions that were concurrently 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 in the present appeal. The same being devoid of merit is, accordingly, dismissed.

FEBRUARY 20, 2015
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(ARUN PALLI)
JUDGE