

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1467 of 2011 (O&M)
Date of Decision: 23.04.2015

Gurmail Singh

... Appellant

Versus

Jarnail Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Kulbir Sekhon, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The plaintiff is in second appeal having lost in both the Courts below. He filed a suit for permanent injunction against the defendants to the effect that they be restrained from interfering in the possession of the plaintiff over the suit property as fully described in the head note of the plaint situated at Village Phulewala, Tehsil and District Muktsar. The plaintiff asserted that he was owner in possession of the suit property as detailed in red colour in the site plan attached with the plaint. When his title and possession was put under threat, he brought suit apprehending his forcible dispossession by the hands of the defendants in an illegal and unauthorized manner. Defendant Nos.1 and 3 were proceeded ex parte by the trial Court. The suit against defendant No.4 was disposed of in April

2006 where he made a statement that he did not have any concern with the property in dispute nor he would interfere in it. Defendant No.2 Bikkar Singh contested the suit. The suit was based on an incorrect site plan. The contesting defendant pleaded that the plaintiff was neither in possession nor owner of the suit property. Infact, Avtar Singh minor son of Teja Singh was owner in possession of the suit property. He prayed for dismissal of the suit. The plaintiff did not file any replication to the written statement of defendant No.2. Six issues were framed the vital one of which was as to possession and entitlement to injunction prayed for. The parties led their evidence in support of their respective cases and after it was recorded and documents produced the evidence were closed by order.

To prove that he was owner in possession, the plaintiff examined PW-1 Mohinder Singh. In his testimony, he deposed that the suit property measures 10 Marlas which is bounded on the eastern side by a pond, western side by a passage, on the northern side by a vacant plot of Ginder Singh and on southern side lay the property of Balwinder. The suit property is situated in the Lal-lakir of Village Phulewala. The house of plaintiff existed over it, which was a katcha one but had sometime past and had crumbled down. But he was in possession of the vacant plot without any interruption. PW-2 Sohan Lal deposed in favour of the plaintiff regarding ownership and possession over the suit property. After PW-1 and PW-2 filed their examination-in-chief by way of affidavits they did not appear for facing cross-examination. Not having faced cross-examination, the oral evidence did not qualify as legally admissible evidence and could be read against the defendants as rightly concluded by the court below. PW-3 Jagjit

Singh spoke in favour of the plaintiff that the latter remained in possession over the suit property. However, the witness in cross-examination deposed that he had not seen any document regarding ownership of the plaintiff over the property in dispute. He did not know Avtar Singh but he knew Teja Singh father of Avtar Singh, who was said to have resided with the brother of plaintiff Gurmail Singh. He admitted in his cross-examination that the plaintiff had not been residing in the suit property at present i.e at the time the statement was recorded in court. PW-4 Sukhdev Singh appeared in the witness box and deposed that plaintiff was not in possession of the suit property. He deposed that there was neither house nor walls existing in the suit property. The plaintiff had not resided over the suit property for ten years past although he was in possession of it. The property is within the red line of the village. He also did not know of any Avtar Singh.

The plaintiff appeared as his own witness and tendered his examination-in-chief by way of affidavit in support of his pleaded case in the plaint. He testified in cross-examination that he had resided in the suit property over ten years ago but is still in possession of it. He deposed that he had purchased the property from one Jagjit Singh son of Jang Singh resident of the same village for a sum of Rs.10/- by an oral arrangement but Jagjit Singh has not deposed to the factum of sale. The witness deposed that he had not seen any document of ownership of the suit property. The alleged previous owner Jagjit Singh while appearing as PW-3 had not supported the plea of the plaintiff before the Court..

In rebuttal, the defendants examined DW-1 Gurbachan Singh an ex-member of the Panchayat of Village Phulewala. He stated that parents of

minor Avtar Singh had expired and the boy has been residing with his maternal grandfather Bikkar Singh at Village Phulewala. His parents were in possession of the property and since their death he had been residing therein. The property was mortgaged in 1995 and it was redeemed from him. The plaintiff has no concern with the suit property. He further stated that father of Avtar Singh defendant was employed as a *siri* [farm hand] with him. DW-2 Jagga Singh deposed that Avtar Singh was owner in possession of the suit property. Avtar Singh was about 13/14 years old and was owner in possession but was not impleaded as a party to the suit.

The First Appellate Court found no documentary evidence on record in proof of ownership or possession of the plaintiff over the suit property. Ex.P-1 is only a rough site plan which cannot be termed as a document of title. Nor was any other document produced which is admissible in evidence as conclusive of title. Even Surjit Singh Gill, the author of the document Ex.P-1 was not examined in Court by the plaintiff to prove the rough site plan. What the Court was left with were only the oral testimonies of the plaintiff and of the witnesses produced by both sides. The suit property is a vacant site and possession could only follow title under the law.

The defendants relied upon writing Ex.D-1 which is an unregistered document and it cannot be taken into account being an unregistered document but the writing Ex.D-1 is attested by the plaintiff by putting his thumb impression on it by way of acknowledgement which casts a shadow on the case set up by the plaintiff. On these premises the trial court dismissed the suit which led to first appeal.

The first appeal court reasoned that even if this writing Ex.D-1 is ignored being an unregistered document and a compulsorily registrable one, even then there is nothing on record produced by the plaintiff to prove his ownership over the suit property. In absence of proof, the plaintiff's suit must fail as the burden and onus was on him to discharge by production of documents of title and the best evidence. The Court has found insufficient evidence to swing the case in favour of the plaintiff. Consequently, the first appeal court has upheld the findings of the trial Judge recording its reasons in holding concurrently that the plaintiff has failed to prove his ownership and possession over the suit property. This reasoning cannot be held to be perverse or illegal in any manner. Resultantly, findings recorded under issues No.1 and 2 have been affirmed by the first appeal court. If he has failed to prove any right, title or interest over the suit property then injunction cannot be issued in plaintiff's favour and against the defendants. Besides, both the Courts have found under issue No.5 that minor Avtar Singh was a necessary party to the lis and the suit was bad for non-joinder of necessary parties, for which reason as well, the appeal has been dismissed.

From the weight of the evidence led by the plaintiff as appreciated by the courts below, no other conclusion is possible to be drawn in second appeal but to affirm the findings of both the Courts below which are well reasoned and in perfectly good order.

No ground is made out for interference in this appeal since no question of law or fact arises which is substantial viewed from standpoint of section 100 CPC, which accordingly is ordered to stand dismissed in limine

as not warranting admission.

(RAJIV NARAIN RAINA)
JUDGE

23.04.2015
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