

218

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

RSA NO.2219 OF 2011 (O&M)

Decided on: 17.08.2015

SANDEEP SINGH @ SUKHDEEP SINGH AND ANOTHER

. . . Appellants

Versus

NIRMAL SINGH AND OTHERS

. . . Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Nakul Sharma, Advocate
for the appellants.

Mr. S.K. Arora, Advocate
for the respondent No.1.

ARUN PALLI, J. (Oral)

Suit filed by the plaintiffs was dismissed by the trial Court vide judgment and decree dated 07.03.2005. Appeal preferred against the said judgment and decree failed and was dismissed on 09.09.2010. This is how, plaintiffs 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, plaintiffs prayed for a declaration that they were owners in possession of two plots each measuring 6-½

marlas as shown in red colour in the site plan and marked by letters 'ABCD' and 'EFGH'. And also for a decree for injunction restraining the defendants from interfering in the peaceful possession of the plaintiffs. It was averred that the suit property was owned by father of the plaintiffs; namely Shangara Singh and their uncle Dara Singh. Plot shown with letters 'ABCD' in the site plan was owned by Dara Singh and on 25.03.1988, Dara Singh delivered possession of the said plot to the plaintiffs. A receipt-cum-affidavit was also executed in favour of the plaintiffs. Therefore, plaintiffs being in possession of the suit property, defendants had no concern therewith. As, a week prior to institution of the suit, defendants tried to dispossess the plaintiffs, thus, this suit.

In defence, it was pleaded, inter alia, by the defendants No.1 to 3 that Shangara Singh and Dara Singh had no right, title or interest in the suit property. Therefore, plaintiffs were neither owner nor in possession of the plots in question. Rather, defendants set up a title in themselves and claimed to be in actual physical possession of the suit property.

On a consideration of the matter in issue and the evidence on record, the court arrived at a conclusion that plaintiffs in support of their claim have examined Dara Singh as PW-3, who is alleged to have delivered the possession of the suit property to the plaintiffs. However, his testimony revealed that though in his affidavit Ex.P1, he had purportedly delivered the possession of the

plot that was purported to be owned by him to the plaintiffs, but conceded that at present defendant No.1-Nirmal Singh and his father Mukhtiar Singh were in possession. As regards affidavit Ex.P1, it was concluded that it was surrounded by suspicious circumstances as Ramesh Kumar PW-1 testified in his cross-examination that he has not seen any document regarding possession of Dara Singh over the plots in question. Further, no consideration was passed in his presence. As none other than Dara Singh himself admitted, defendants to be in possession over the suit property, plaintiffs were not found entitled even for injunction. Accordingly, the suit was dismissed.

In appeal preferred by the plaintiffs, as Trial Court had not recorded any findings as regards title, accordingly the 1st Appellate Court vide order dated 28.04.2008 sought a report from the trial court. And Trial Court, vide report dated 02.08.2008 specifically concluded that the plaintiffs had failed to prove their title over the suit property.

Learned 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 learned Trial Court as also the report dated 02.08.2008, accordingly the appeal was dismissed.

I have heard learned counsel for the appellants and perused the 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 was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the appeal is wholly devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Concededly, the plaintiffs sought declaration qua title over the suit property. Needless to assert, for plaintiffs to succeed, they were required to prove that they indeed were the owners of the plots in question. Nothing was brought on record, least any cogent evidence to substantiate their ownership *viz-a-viz* suit property. The affidavit Ex.P1 that was relied upon by the plaintiffs, purportedly executed by Dara Singh, was not a document of title. Further, recitals in the document simply showed that Dara Singh had transferred possession of the property measuring 6½ marlas. Further, ownership of immovable property valuing more than ₹100/- could not be transferred vide a document that was not registered. Nothing was brought on record to show whether even Dara Singh held any title to the suit property. Qua the other plot measuring 6½ marla, though plaintiffs claim it to be ancestral property, however, again nothing was brought on record to show that the nature of the property was ancestral. Likewise, it could not be proved either that Shangara Singh or any of his predecessor ever held a title in the

RSA NO.2219 OF 2011 (O&M)

suit property. In short, in the absence of any evidence, claim of the plaintiffs that they were owners of the two plots measuring 13 marlas remains unsubstantiated.

As regards possession, none other than Dara Singh himself, conceded that at present Nirmal Singh defendant No.1 and his father Mukhtiar Singh were in possession of the suit property. Not just that, no independent evidence was led to show that Dara Singh ever occupied the suit property. Thus, a decree for injunction was also rightly declined to the plaintiffs.

Learned counsel for the appellants could not point out as to how the conclusions arrived at by 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. The appeal being devoid of merit is accordingly, dismissed.

[ARUN PALLI]
JUDGE

17.08.2015
sachin