

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3306 of 2011 (O&M)
Date of Decision: December 4, 2015

Smt.Santra Devi & others

...Appellants

Versus

Yad Ram & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Amit Jain, Advocate,
for the appellants.

None for the respondents.

AMIT RAWAL, J. (Oral)

The appellant-plaintiffs are in Regular Second Appeal against the judgment and decree dated 17.5.2011 passed by the Lower Appellate Court, whereby the judgment and decree of the trial Court decreeing the suit, have been set-aside.

Mr.Amit Jain, learned counsel appearing on behalf of the appellant-plaintiffs submits that the trial Court, on the basis of the ration card and house tax assessment, found that the property described in the suit tallied with the aforementioned documents. Even the respondent-defendants in the written statement did not dispute the identity of the property and gave the number of the property as MC -588-11/8-A4 and, therefore, the Lower Appellate Court has committed illegality and perversity in rendering a finding that once the appellant-plaintiffs have not been able to prove the

ownership, therefore, they are not entitled to any relief. He further submits that though mandatory injunction was on the basis of the possession, but the Court, at best, could observe that the aforementioned documents revealed that the appellant-plaintiffs are in long settled possession and should not have been dispossessed, except in due course of law. In a suit for injunction, title cannot be decided and, therefore, no issue with regard to the title was framed.

None had put in appearance on behalf of the respondents despite being served, which has been noticed by this Court in so many orders. Accordingly, I proceed to decide the appeal on merits.

I have heard the learned counsel for the appellant-plaintiffs and appraised the paper book.

The trial Court, on the basis of the oral and documentary evidence, gave the following findings:-

“After consideration the contentions advanced by Ld.Counsel for the parties and after perusal of the considered view that admittedly House Tax Assessment Register and Ration Card are not document of title but plaintiffs have filed the present suit for seeking a decree for permanent injunction and in a suit for permanent injunction, the question of ownership cannot be adjudicated and on the basis of oral evidence of PW3 as well as on the basis of Ex.PW3/A and Ex.PW3/B, it is evident that the disputed plot is hearing no.588-11/11/31-A and that fact is admitted by DW1 in her cross-examination. So, possession of the plaintiffs over the disputed plot is evident by the oral as well as documentary evidence coupled with the admission of PW1. In that circumstances, plaintiffs are entitled to protect their possession and they are entitled to decree for permanent injunction. I have no doubt regarding the law laid-down in Bisheshar Nath and another Vs. Shanti Devi (Dead) through

L.Rs. (Supra) and Prem Lata Vs. Bhupinder Singh (Supra) but these authorities are not applicable to the present facts and circumstances of the case because in the present case, possession of the plaintiff over the dispute land is duly evident by other evidence adduced by the plaintiffs hence, this issue is accordingly decided in favour of plaintiffs.”

The Lower Appellate Court reversed the findings giving the following reasons:-

“11. After having heard both the parties at length I have come to a conclusion that the plaintiffs have not pleaded in their plaint as to what was the property number, house number earmarked for the property detailed in para no.1 of the plaint. The plaintiffs have produced Ex.PW3/A which the site plan attached with the plaint. In my opinion a site plan prepared by a private draftsman is not a document of title. In the site plan no construction is shown to be raised over the disputed property, rather it is shown that “Ladawani” are there. The plaintiff-respondent has produced Ex.PW3/A in which at Sr.No.2093 it shown that house No.588/11-11/31A is entered in the name of Dhauji over which three rooms are built. Therefore, from Ex.PW3/A it transpired that some property which stands in the name of Dhauji consists of three rooms. But strange enough in Ex.P1 no such rooms are shown in the suit property. Therefore, only one conclusion can be drawn that the property found mentioned at Sr.No.2093 is not the suit property shown in Ex.P1. In Ex.PW3/B the same property is shown that house tax no.588/11-11/31A in the name of Dhauji. Therefore, by Ex.PW3/B it has not been proved that this house tax entry pertains to the suit property shown in Ex.P1. Resultantly, Ex.PW3/C and Ex.PW3/D are also not helpful to the plaintiff to prove that the property in dispute is entered in the municipal record in the ownership and possession of the plaintiffs.

12. The plaintiffs have further produced Ex.PW4/A

Ex.PW4/C copy of ration card. The said copy of ration card pertains to house no.DN 581. Certainly, house No.DN-581 is not the property which is found described in municipal record. Therefore, ration card produced by the plaintiffs to substantiate their plea of ownership and possession are not worth reliance. Likewise, statement of PW5 Shiv Kumar cannot be relied upon to arrive at a conclusion that the electricity connection stands in the name of plaintiff which is installed on the suit property. PW5 Shiv Kumar UDC, D.H.B.V.N.L. has not proved by any means that connection No.HD-1523 was installed at disputed property. In these circumstances findings of learned Trial Court appears to be perverse and based on ill-appreciation of evidence led by the plaintiff. Therefore, I have come to a conclusion that the plaintiffs have miserably failed to prove that the property in dispute is owned and possessed by the plaintiffs. The findings of learned Trial Court in which statement of defendant Anchi Devi is considered to arrive at a conclusion that the plaintiffs are in possession does not appeals to reason. I am of the considered opinion that initial onus to prove that the plaintiffs are owners in possession of the suit property lies upon the plaintiffs and they cannot take benefit out of weakness of defendants' case. Therefore, in these circumstances merely on the basis of some unclear and ambiguous statement of defendant it cannot be concluded that the plaintiffs are owner in possession of the suit property. Resultantly, the findings of learned Trial Court are hereby reversed being not based upon correct appreciation of facts of law. It is also held that the plaintiffs are not entitled to perpetual injunction. They have failed to prove their ownership and possession. I am also of the considered opinion that if a party comes to a court and claims possession on the basis of ownership he cannot protect his possession without proving hostile. Therefore, issue No.1 is returned against the plaintiff and in favour of defendants.”

In my view, the reasoning given by the Lower Appellate Court is not only perverse but erroneous for the reason that the appellant-plaintiffs, in order to prove their possession and claiming permanent injunction, have examined PW-3 House Tax Clerk and PW-4 Clerk from the office of Food & Supply to prove the ration card and as well as the house tax assessment. In essence, in the evidence of PW-3, it has come on record that the house no. kept on changing. The Lower Appellate Court has remained totally oblivious of the categorical admission in the written statement vis-a-vis identity of the property, which was specifically described in the plaint. Once the defendants did not dispute the identity of the property, the Lower Appellate Court ought not to have interfered with the judgment and decree passed by the trial Court, based upon the appreciation of oral and documentary evidence. It is also settled law that the person, who is in long and settled possession, cannot be dispossessed except in due course of law. Reference has been made to the judgment rendered in **Rame Gowda (D) by Lrs Versus Mr.Varadappa Naidu (D) by Lrs. and another, 2004(1) R.C.R. (Civil) 519.** In essence, the trial Court did not grant any declaration to the appellant-plaintiffs vis-a-vis the ownership, but only enjoined the defendants from dispossessing.

In my view, the judgment and decree of the trial Court are fair and reasonable, which are based upon the appreciation of oral and documentary evidence. Accordingly, the following substantial question of law would arise in the present appeal:-

“Whether the Lower Appellate Court, being the last Court of law, has examined the oral and documentary evidence while reversing the findings or not?

Keeping in view the aforementioned facts, the judgment and decree of the Lower Appellate Court are not sustainable and, thus, the substantial question of law, as noticed above, is answered in favour of the appellant-plaintiffs and against the respondent-defendants. Accordingly, the judgment and decree of the trial Court is restored.

Appeal stands allowed.

December 4, 2015
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(AMIT RAWAL)
JUDGE