

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

RSA No.3851 of 2012 (O&M)

Date of Decision: September 22, 2015

Niranjan Singh

.... Appellant

vs

Sukhwant Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. A.K. Khunger, Advocate for the appellant.

Mr. B.S. Sidhu, Advocate for respondent No.1.

1. Whether Reporters of Local Newspapers 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?

KULDIP SINGH J.

Impugned in the present regular second appeal is the order dated 07.01.2012 passed by learned Addl. District Judge, Sri Muktsar Sahib, vide which the appeal filed by the plaintiff was allowed and the judgment and decree dated 10.05.2011 passed by learned Addl. Civil Judge (Sr. Divn.), Gidderbaha was reversed and findings were set aside qua issue No.2 whereas judgment and decree under challenge qua issue No.1 was upheld. The cross objections filed by the defendants against issue No.1 were also dismissed being meritless.

A perusal of the original file shows that Sukhwant Singh filed a suit for permanent injunction restraining the defendants for causing any interference or dispossessing the plaintiff from land measuring 32 kanals 9 marlas fully detailed in the headnote of the

plaint, situated within the revenue limits or village Lambi, Tehsil Malout, District Muktsar, illegally, forcibly except in due course of law.

According to the plaintiff, the suit property is shown to be the property of provincial government, which was alleged to be temporarily allotted to Tehal Singh son of Sulakhan Singh, predecessor-in-interest of the plaintiff. Tehal Singh died and mutation of inheritance of Tehal Singh was sanctioned in favour of his widow, daughters and son vide mutation No.2189. It was claimed that suit property was previously in possession of Piara Singh son of Tehal Singh S/o Variyam Singh, uncle of the plaintiff for last more than 30 years and his possession was accordingly recorded in the jamabandi for the year 1969-70. Thereafter, Plaintiff- Sukhwant Singh, Jaswant Singh son of Piara Singh son of Variyam Singh are shown to be in possession of suit land as per the entries in the jamabandi for the year 1999-2000 and khasra gardawris up to Haari 2002. Plaintiff and Jaswant Singh had not surrendered the possession of the suit land to anybody. They are in continuous possession of the suit land without any protest, openly to the knowledge to all concerned including the defendants and their possession is continuous, hostile, notorious and without paying any share of the crop to any person. They have become owners of the suit land in equal share by way of adverse possession. The plaintiff reserved his rights to file the suit for declaration to the effect that he along with Jaswant Singh have become the owners of the suit land.

It was further claimed that defendants had purchased the suit land from the heirs of Tehal Singh vide sale deed dated 08.05.2002. Under the garb of the said sale deed, defendants wanted to take forcible possession of the suit land from the plaintiff and Jaswant Singh illegally, forcible except in due course of law.

In the written statement, defendants took the stand that the suit land along with other land was allotted to Tehal Singh son of Sulakhan Singh. The possession was accordingly delivered by the revenue department to Tehal Singh and entry in this regard was made in the Roznamcha of the Halqa patwari of Lambi on 15.04.1969.

The death of Tehal Singh and mutation of his inheritance were admitted. However, it was denied that Piara Singh ever remained in possession of the suit land for the last 30 years. It was also denied that plaintiff and Jaswant Singh ever remained in possession of the suit land or they are in possession of the suit land at the spot. It was stated that the plaintiff had not produced any document along with the plaint to prove that Piara Singh, plaintiff or Jaswant Singh ever entered into possession of the suit land in any capacity. It was stated that entries of the khasra Gardawris are incorrect and did not depict the actual and factual position of the spot.

It was further pleaded that under the law, the entries of revenue record which were changed without any order of the competent authority or of the statement of the concerned person

shown previously in the revenue record, were against law and facts and were illegal and no reliance could be placed upon such like illegal entries of the revenue record. It was also pleaded that assuming but not admitting that if the plaintiff succeed in proving his possession over the suit land then his possession over the suit land is merely as a tress-passer and under law no relief like the one in hand can be granted against the true owner. It was also denied that the plaintiff and Jaswant Singh were owners of the suit land. Hostile, notorious and adverse possession was also denied.

In the replication, the plaintiff reiterated the averments made in the plaint.

From the pleadings, the lower court framed the following issues:

- “1. Whether the plaintiff is in possession of the suit land? OPP*
- 2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP*
- 3. Relief.*

Learned Addl. Civil Judge (Sr. Divn.), Gidderbaha, held that the plaintiff had failed to prove his title over the suit land. It was also held that the plaintiff had failed to prove the forcible possession of the suit land whereas the defendants are the true owners of the suit land. Therefore, while applying the law laid down in **“Mohinder Singh vs Pala Singh, 2010 (Suppl.) CCC. 355 P&H**, it was held that the plaintiff being a tress-passer is not entitled to seek the injunction against the defendants.

However, in the appeal before the learned Addl. District Judge, Sri Muktsar Sahib, the said judgment and decree were reversed.

In the appeal before this Court, following substantial question of law arises:

“Whether the findings recorded by the first Appellate Court are perverse against the record and based on misreading of the evidence?”

I have heard learned counsel for the parties and have also carefully gone through the case file.

At the very outset, from the original written statement it comes out that the defendants had denied the possession of plaintiff over the suit land. However, learned Addl. District Judge, Sri Muktsar Sahib reproduced the facts mentioned in the written statement contrary to the record, regarding possession.

The relevant facts given in the judgment of the first Appellate Court are reproduced below:

“ --- They also admitted the possession of Piara Singh or Jaswant Singh on the suit land for the last more than 30 years but pleaded that they are in illegal possession and trespassers. So, the question of surrendering the possession to anybody does not arise.--”

Learned Addl. District Judge thereafter record the following findings”

“-- As such, in the light of above citations, it can be safely concluded that the plaintiff has proved

their actual physical possession over suit land but their capacity is merely a trespasser, however, with long and continuous possession and as discussed above, a trespasser can be evicted with due course of law. As such, the findings of the Ld. Lower Court on issue No.1 are up held, whereas, findings of the Ld. Lower Court on issue No.2 are set aside and issue Nos.1 and 2 are decided in favour of the plaintiff now appellant, in the main appeal and against the defendant now respondent and also the cross objectors.”

The plea of learned counsel for the appellants-defendants is that no injunction can be granted against the true owners and judgment passed by the learned Addl. Civil Judge (Sr. Divn.), Gidderbaha was correct and according to the law whereas the judgment and decree of the first appellate court is perverse and is based on misreading of the written statement and the evidence and is liable to be reversed.

The contention has been controverted by the learned counsel for the plaintiff-respondent. It is stated that the plaintiff has proved to be in possession whatever may be the status.

It is necessary to determine the possession of the plaintiff over the disputed property. Undoubtedly, Tehal Singh son of Sulakhan Singh is the original allottee under the Provincial Government. He was recorded in possession as such borne out from the copy of jamabandi for the year 1969-70 (Ex.P1). In the some part of the land bearing khasra No.10//18(2-13), 23/1(4-0), 25//1/1, Tehal

Singh S/o Sulakhan Singh is recorded to be in possession through Piara Singh son of Tehal Singh S/o Variyam. In the subsequent jamabandi for the year 1979-80 (Ex.P3), Sukhwant Singh for the first time recorded to be in possession under allottee over the suit land along with Jaswant Singh, grandson of Tehal Singh S/o Sulakhan Singh. It shows that the plaintiff along with Jaswant singh, was in possession of the suit land under Tehal Singh allottee on account of being grandson of Tehal Singh. It goes to show that the possession of Sukhwant Singh and Jaswant Singh were permissible possession. In the subsequent jamabandi for the year 1984-85 (Ex.P2), some entries were carried out except a change regarding khasra No.10//18 (2-13), 23/1(4-0), 25//1/1. Only Sukhwant Singh, plaintiff was in possession under the allottee. Further entries in the jamabandi for the year 1989-90 (Ex.P4) and for the year 1994-95 (Ex.P5) carries some entry with the change. The possession was further carried out in the jamabandi for the year 1999-2000 (Ex.P6), wherein it was further recorded in the remarks claiming that vide mutation No.2189, Tehal Singh deceased has been succeeded by widow Nihal Kaur, daughters, namely, Kashmir Kaur, Vir Kaur, Mahinder Kaur, Balwinder Kaur and son, namely, Lakhwinder Singh. Similar entries were carried out in the khasra girdawri. It goes to show that since the jamabandi for the year 1979-80, the plaintiff is in possession of the disputed property being the grandson of Tehal Singh S/o Sulakhan Singh, who was allotted the disputed property by the Provincial Government. Therefore, the possession of the plaintiff is permissible.

Tehal Singh was succeeded by his widow, four daughters and one son Lakhwinder Singh. The effect would be that the possession of the plaintiff under said Nihal Kaur etc. became permissible possession. Now, the copies of the sale deeds (Ex.D2 and D3) show that the legal heirs of Tehal Singh, namely, Nihal Kaur etc. have sold the suit land to Niranjn Singh son of Angrej Singh, Sukcharan Kaur widow of Angrej Singh on 08.05.2002. The possession is recorded to have been delivered. Since the original vendor Nihal Kaur etc. were not in possession of the disputed property, therefore, they could not deliver the possession of the same to the defendants. Thus, it is to be inferred that the original possession of the plaintiff over the disputed property was permissible possession since 1979-80 under the original allottee, who has been succeeded by Nihal Kaur etc., who have sold their rights to the defendants. Therefore, now, the status of the plaintiff is that of a trespasser. However, it is a case where there is a possession for long time i.e. since 1979-80. The plaintiff being in permissible possession under Tehal Singh and then his successors Nihal Kaur etc., cannot claim that his possession is open, hostile and notorious. The present status is that possession of the plaintiff is that of a trespasser. The copy of the jamabandi is produced by the defendants regarding the same period carrying the same entry and any change made during the pendency of the suit or thereafter are to be ignored. Since the vendors/allottees were not in possession to deliver the possession to the vendees-defendants.

Now, the further question would arise as to whether in this situation, the possession of the plaintiff is to be protected?

The lower court had relied upon ***Mohinder Singh's case (supra)*** to held that the plaintiff being trespasser is not entitled to the possession of the true owner.

However, in the present case, it is found that the possession of the plaintiff under the original allottee Tehal Singh was permissible on account of he being the grandson of Tehal Singh. His possession has become that of a trespasser after the land was sold by Nihal Kaur etc. and the plaintiff refused to vacate the possession. In these circumstance, the status of the plaintiff was at different footage before defendants purchased the rights of Nihal Kaur etc. The defendants were expected to check up the revenue record to see wheter possession is with Nihal Kaur etc. vendors. It being so, the plaintiff cannot be evicted from the suit land except in due course of law.

In case of ***“Rame Gowda (D) by Lrs. Vs Mr. Varadappa Naidu (D) by Lrs. and Anr., 2004(1) RCR (Civil) 519***, the Hon'ble Supreme Court held that if the trespasser is in settled possession, then injunction against true owner can be granted.

Learned counsel for the appellant has relied upon the authority of single Bench of this Court delivered in ***“Mohinder Singh vs. Pala Singh and others”, 2010(Suppl.) Civil Court Cases 355***.

The facts of the said case are entirely different from the present case. Here the initial possession of the plaintiff was in the

nature of permissible possession. Their status have now become of a trespasser after the sale of the land by Nihal Kaur etc.

It being so, the first appellate court rightly held that the plaintiff cannot be evicted except in due course of law. However, it comes out that in the relief clause, the appropriate relief has not been mentioned by the first appellate court. The said defect can be rectified by this Court.

Hence, the present regular second appeal stands dismissed and it is ordered that the defendants are restrained from evicting the plaintiff except in due course of law.

September 22, 2015
sarita

(KULDIP SINGH)
JUDGE