

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 434 of 2012 (O&M)

Date of decision : September 29, 2015

Kuldeep Singh

... Appellant

vs.

Gurcharan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rohit Ahuja, Advocate
for the appellant.

Mr. Ashok Singla, Advocate
for the respondent.

Surinder Gupta, J

This regular second appeal is directed against the judgment and decree dated 4.1.2012 passed by the learned Additional District Judge, Kapurthala, whereby the suit of plaintiff-respondent Kuldeep Singh seeking relief of permanent injunction restraining the defendant/respondent from interfering into or taking forcible possession of any of four shops constructed by him on plot no.113 measuring 3 marla situated on the main road of village Begowal, Tehsil Bholath, District Kapurthala, allotted to him by the Gram Panchayat of village Begowal, Tehsil Bholath, District Kapurthala, being land less person was dismissed.

2. The suit in fact pertains to the land of Gram Panchayat of village Begowal, Tehsil Bholath, District Kapurthala bearing khewat no.2094, khautani no.2783 khasra no.84//19/1/1 (0-3).

3. (The plaintiff/appellant herein will be referred as plaintiff and defendant/respondent as defendant in the later part of this judgment).

Case of plaintiff in brief:

4. The plaintiff claims to have constructed four shops on the plot no.113 allotted to him, out of which he had let out three shops to different tenants. The defendant had no concern with the property in dispute which is surrounded by street on two sides and by plot no.112 on third and fourth side. Due to political and police influence, the defendant is threatening to take forcible possession of the shop in possession of plaintiff which is on the western side and locked by him. The request to the defendant not to interfere in the possession of plaintiff have no impact resulting in filing of this suit.

5. The suit was initially filed against Gurcharan Singh and his son Tejinder Singh, however, it was withdrawn against Tejinder Singh on 24.3.2005. The only contesting defendant remains as respondent-defendant Gurcharan Singh.

Plea of defendant:

6. As per defendant, four shops, two on Begowal-Bhogpur road and two on the backside, shutter of which opened towards *gali* on the western side are owned and possessed by his son Tejinder Singh. In the year 1976, plaintiff was minor and around the year 1976, Baldev Singh, attorney of plaintiff asked the defendant and his son Tejinder Singh that plot no.113 and 112 may be divided in such a manner so that plaintiff and defendant no.2 each may have two shops towards Begowal-Bhogpur road and two shops on the backside with shutters opening in street. The plot was filled with mud. It was got levelled and foundation were dig by Tejinder Singh and thereafter construction of four shops was made by the plaintiff and four shops by Tejinder Singh.

7. The defendant got electric connection in the shop, the shutter of which opened towards Begowal-Bhogpur road which is still installed therein. These two shops along with one shop towards street were let out by defendant on behalf of his son to one Satnam Singh of village Raipur Rajputan at monthly rent of ₹500/- per shop. One shop towards street on western side remained under the use and occupation of Tejinder Singh who had stored his goods therein. Satnam Singh was doing business of fabrication of iron gates etc. and surrendered the possession of shop on Begowal-Bhogpur road in July, 2003. The shop opening towards the Begowal-Bhogpur road and one shop towards the street was then leased out by Tejinder Singh through defendant to Harjit Kaur, who is carrying 'karyana' business in the said shop. She is still in possession of the shop as tenant. The other shop on Begowal-Bhogpur road had been let out to Piara Singh, who is doing business of 'laboratory'. In one shop on Begowal-Bhogpur road, Poonam is running a 'STD/PCO' business as tenant of plaintiff while the other shop of plaintiff on this road is under tenancy of Tarsem Singh who is running a 'chemist' shop therein.

8. It was further averred that plaintiff in league and connivance with revenue official through his general attorney got a wrong and illegal mutation sanctioned and subsequent entries in the *khasra girdawri* are wrong and confer no right or title on plaintiff. The dispute between the parties was taken to the Panchayat of respectables and police and settlement was arrived at the house of Rawel Singh son of Lachhman Singh on 20.2.2005. The general power of attorney of plaintiff and defendant gave in writing to S.H.O. Begowal on 20.2.2005 regarding settlement of dispute.

Even in the record of Nagar Panchayat, Begowal two shops on the Begowal-Bhogpur road are recorded as owned by Tejinder Singh. The plaintiff has filed the suit based on false and frivolous claim.

9. The plaintiff re-iterated his case in the replication contesting and controverting the averments in the written statement. Regarding electric connection in the shop on Begowal-Bhogpur road in the name of defendant no.1, it was alleged that the plaintiff had constructed the shop in dispute in the year 1996 and by that time the defendant had not raised any construction on their plot. The defendant requested the father of plaintiff to allow him to install electric connection in his shop to have water for raising construction on plot no.112. The father of plaintiff allowed defendant no.1 to install the electric connection in this shop but this in no manner prove the possession of the defendant over the shop. All the remaining averments in the written statement regarding giving of shop to various tenants etc. were contested, controverted and denied.

10. Pleadings of the parties led to the framing of issues as follows :-

1. *Whether the plaintiff is entitled to permanent injunction as prayed for?OPP*
2. *Whether the suit is bad for non-joinder of necessary parties?OPD*
3. *Whether the site plan placed on the file by the plaintiff is wrong, if so, its effect?OPD*
4. *Whether the suit is not maintainable in the present form?OPD*
5. *Whether the plaintiff has got no locus-standi and cause of action to file the present suit?OPD*
6. *Whether the plaintiff is estopped to file the present suit*

by his own act and conduct?OPD

7. *Relief.*

11. While decreeing the suit, Additional Civil Judge (Sr. Division), Kapurthala recorded finding that plaintiff is owner of plot bearing khasra no.84//17/1/1 (0-3) as per revenue record. The defendant who has no concern with the suit property could not claim any settlement with plaintiff or his attorney. It was proved that plaintiff was allotted plot no.113 while Tejinder Singh was allotted plot no.112. The defendant was restrained from interfering in possession of the property owned and possessed by plaintiff as mentioned in the head note of the plaint.

12. The first appellate court reversed the findings of the court below relying on the settlement dated 20.2.2005 Ex.D9. It was also observed that the suit was filed by Kuldeep Singh through his attorney Baldev Singh but the original power of attorney was not proved on record. The plaintiff despite specific plea that he had let out three shops on Begowal-Bhogpur road to different tenants had not disclosed names of the tenants or produced the rent note in this regard. It was also observed that plaintiff has to stand on his own legs and cannot be allowed to take benefit of any deficiency in the pleadings or evidence of defendant. On the other hand, the defendant examined DW-3 Harjit Kaur who had stated on oath that she is tenant in the shop on the western side of shop under defendant @ ₹600/- per month where she is carrying on Karyana Business. This coupled with the fact that the electric connection in one of the shop was installed in the name of defendant weighed before the appellate court to decline the relief of injunction as prayed for.

13. I have heard learned counsel for parties and perused the lower court record and paper book with their assistance.

14. Learned counsel for plaintiff-appellant while referring towards the revenue record and the site plan Ex.P1 and Ex.P2 has argued that the plaintiff is owner of plot no.113 which is on the main Begowal-Bhogpur road while Tejinder Singh was allotted plot no.112 on the backside of plot no.113 having street on both sides. This plot is not on the main road as shown in the site plan Ex.P2. The demarcation report Ex.P3 was also given by Patwari to this effect. To prove the allotment of plot no.113 to plaintiff reliance has been placed on resolution Gram Panchayat dated 27.9.1976. The village Sarpanch had also given report to this effect, copy of which is Ex.P5. The site plan of the plot carved out by Pacnahyat is Mark-B which shows the location of plot no.112 and 113.

15. On perusal of the evidence and documents on record, it has come to my notice as to how an attempt has been made by the plaintiff and others to swindle the Gram Panchayat's land. The resolution of Gram Panchayat Ex.P4, which has been relied by the plaintiff in support of his contention that he has been allotted the plot no.113 shows that Gram Panchayat vide resolution dated 27.9.1976 had granted right to different persons under Rule 10 (B) of Punjab Village Common Lands (Regulation) Rules, 1964, to use the plots mentioned in front of their names. This shows that the Gram Panchayat had not divested itself of the ownership of the land from which plot including plot no.112 and 113 were carved out and given for user to different land less persons. There is no evidence that resolution of Gram Panchayat was got approved of State Government through

competent officer.

16. I pointedly enquired from learned counsel for appellant-plaintiff that as to how land bearing khasra no.84//19/1/1 (0-3) belonging to Gram Panchayat was mutated in the name of plaintiff. He had no answer to this query. Admittedly, land bearing khasra no.84//19/1/1 (0-3) was never allotted to the plaintiff. As per plaintiff-appellant he was allotted a plot bearing no.113 out of the land bearing khasra no.84//19. It has not been proved on record as to how the mutation was sanctioned, on the basis of resolution of the Gram Panchayat dated 27.9.1976, bestowing ownership of Gram Panchayat land in favour of plaintiff and other allottees who were only allowed right of user of that land.

17. The plaintiff based his claim on the allotment of plot to him by the Gram Panchayat but he has not dared to implead Gram Panchayat as party in this case. As the Gram Panchayat never divested itself of title over the suit property, it was a necessary party in this case and the suit filed by the plaintiff is bad for non-joinder of necessary parties.

18. Even on merits, the plaintiff has no case. He has relied on the evidence which was created during the pendency of suit. Perusal of lower court record shows that the suit was filed on 17.3.2005. The plaintiff has relied upon the demarcation report taken from the Patwari during the pendency of suit on 30.11.2006. The first appellate court has referred to the statement of Patwari in para no.15 of its judgment which reads as follows :-

“I didn't demarcate the property in dispute. I didn't demarcate the surrounding area of the property in dispute. No notice was served upon defendant. The application was moved on 16.10.2006 for the demarcation. I didn't carry akshajra, Musavi, Field book.”

19. Even otherwise, when the suit was pending before the civil court there was no occasion or reason for the plaintiff to approach a revenue official to seek demarcation. Another attempt made by the plaintiff was a report from Panchayat of village Begowal on his application dated 11.10.2006. The report of Patwari as well as of Panchayat was given without associating the defendant and are irrelevant. Admittedly, there is electric connection in the name of defendant installed in the shop on Begowal-Bhogpur road and this plea of the plaintiff that he allowed the defendant to take electric connection at the time of raising construction of shop over plot no.112 is without any basis. It has been stated that the connection was taken to draw water for the construction of shops. Firstly, it is no where the case of plaintiff that water was being drawn through tube-well or with the help of some electric appliance from the land; secondly, if electric connection was allowed for limited purpose, there was no reason for the plaintiff to allow defendant to retain the said connection in his shop; thirdly, as is evident from the statement of Harjit Kaur DW-3, she is running a *karyana* business in the shop on the main road as tenant under the defendant. All these factors go a long way to shatter the case set up by the plaintiff.

20. In view of my above discussion, the plaintiff has no case for grant of relief of injunction as prayed for.

21. No substantial question of law requiring determination arises in this appeal which has no merits and is dismissed.

22. In para no.16 above it has been observed that the land of Gram Panchayat has been got mutated by the plaintiff and other persons in their

the plaintiff or any other person. This reflect that there was an attempt to grab the public land in connivance with Panchayat and revenue authorities and is required to be looked into by the State for taking required, civil, criminal and corrective measures.

23. Copy of this judgment be sent to the Chief Secretary to the Government of Punjab with the direction to depute a Government Officer to look into this and such type of instances and take appropriate civil, criminal and corrective actions to protect the Panchayat land and public properties.

(Surinder Gupta)
Judge

September 29, 2015
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