

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.4507 of 2012 (O&M)

.....

Date of decision:24.4.2015

Surat Singh and another

.....Appellants

v.

Tej Singh

.....Respondent

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Rajender Singh Malik, Advocate for the appellants.

Mr. Ashwani Gaur, Advocate for the respondent.

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Inderjit Singh, J.

Surat Singh and Satbir Singh-appellants/defendants have filed this regular second appeal against Tej Singh-respondent/plaintiff challenging the impugned judgment and decree dated 31.7.2012 passed by the learned District Judge, Sonapat, allowing the appeal filed by the plaintiff-respondent against the impugned judgment and decree dated 18.8.2011 passed by Civil Judge (Junior Division), Sonapat, vide which the suit filed by the respondent-plaintiff has been dismissed.

The brief facts of the case are that Tej Singh-plaintiff (respondent herein) filed suit against Surat Singh and Satbir Singh-defendants (appellants herein) for permanent injunction restraining them from interfering in his peaceful possession and dispossessing him from the house in question. The main case of the plaintiff-respondent is that he is

owner in possession of the residential house in dispute which he had constructed about 30 years ago and had taken the electricity connection 30 years ago. He is also paying 'Chulha' tax to the Gram Panchayat. The ration card and voter card of the plaintiff are also of the same address.

On the other hand, the case of the defendants/appellants is that the plaintiff has no cause of action and locus standi. It is submitted that the plaintiff is neither owner nor in possession of the suit property/house in dispute. It is averred that the above said plot is the ancestral property of the defendants, which has been inherited by them from their father. It is stated that the house of defendant No.2 abuts the house in question, wherein the family of defendant No.2 is residing. It is also stated that the plaintiff is the relative of the defendants.

Both the parties led evidence and after hearing learned counsel for the parties as well as going through the evidence on record, the learned Civil Judge (Junior Division), Sonapat, vide impugned judgment and decree dated 18.8.2011 dismissed the suit on the ground that the plaintiff has failed to prove his ownership and he is merely a trespasser and injunction could not be granted against the true owner.

Aggrieved against the impugned judgment and decree, the plaintiff-Tej Singh filed an appeal before the learned District Judge, Sonapat, who vide impugned judgment and decree dated 31.07.2012 accepted the appeal and decreed the suit of the plaintiff restraining the defendants from interfering in his possession over the suit property except in due course of law. The learned District Judge, Sonapat, held that by no

means, the plaintiff can be alleged to be a trespasser or in unauthorized possession of the disputed house, especially when according to the defendants, the residential house of Satbir Singh, defendant No.2, abuts the disputed house. The learned District Judge held that it is proved on the record that after constructing a house on the disputed plot, the plaintiff has been residing therein along with his family for the last more than 20 years. There is no explanation on behalf of the defendants as to why they did not previously prevent or restrain the plaintiff from raising construction of a house over the plot. The defendants are held to have failed in proving either themselves or Surat Singh, defendant No.1, as owners of the house by any cogent evidence. The learned District Judge also correctly held that the defendants also failed to prove that in any Panchayat, the plaintiff ever agreed to vacate the house on receipt of ₹8,000/-.

Notice of motion was issued in this case. Mr. Ashwani Gaur, learned Advocate has put in appearance on behalf the respondent and contested this appeal.

I have heard learned counsel for the parties as well as have gone through the record.

From the record, I find that as per the findings of the learned Civil Judge (Junior Division), Sonapat, the plaintiff is proved to be in possession of the property in dispute. DW-2 admitted that the plaintiff is residing in the said house since past 20 years wherein he had got electricity and water connections installed in his name. DW-3 and DW-4 also admitted these facts. On the basis of admission of defendants and their' witnesses, it

is duly proved that the plaintiff is in possession over the disputed house for the last 20 years and electricity and water connections are in his name. It is also the case of the plaintiff that he got constructed the house about 30 years back. There is no cogent evidence on record to prove the ownership of the defendants or the plaintiff. Otherwise also, it is a suit for permanent injunction and there is no issue framed regarding ownership of the house on the basis of the pleadings of the parties. The only main issue is whether the plaintiff is entitled for decree of permanent injunction on the ground mentioned in the plaint. The permanent injunction suit can be decided only on the basis of possession. Even otherwise, if the case of the defendants is believed that it was ancestral property and they had inherited from their father, then the plaintiff's wife is the real sister of the defendants. She is also supposed to have inherited the property. But as already discussed, in my view, there is no need to decide the dispute regarding ownership of the property. It can be decided in separate proceedings filed by any of the parties.

As regards the injunction, it is duly proved that the plaintiff is in possession over the disputed house for the more than 20 years. Therefore, the plaintiff cannot be dispossessed forcibly nor the defendants have any right to interfere in his possession except in due course of law. The findings given by the learned District Judge, Sonapat, in the judgment dated 31.7.2012 are as per evidence and law, which do not require any interference from this Court and the same are upheld. No substantial question of law arises in the regular second appeal.

Finding no merit in the regular second appeal, the same is dismissed.

April 24, 2015.

(Inderjit Singh)
Judge

hsp