IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 484 of 2012 (O&M)
Date of decision : August 17, 2015

Ram Kumar

... Appellant

vs.

Naurang and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sandeep Goyat, Advocate
for the appellant.

Mr. T.C. Dhanwal, Advocate
for the respondents.

Surinder Gupta, J

This is regular second appeal against the concurrent findings of courts below dismissing the suit of plaintiff-appellant seeking relief as follows :-

"Suit for permanent injunction to the effect that the plaintiff is owner in possession of one House, constructed over plot no.371 measuring 0 kanal 10 marla fully detailed and described in plain annexed with the plaint, shown as Mark A which is bounded as under :-

East : Remaining portion of plot of Bhoop Singh

West : House of Banwari

North : Gali throughfarre

South : Plot of Shankar,

situated at village Moda Khera, Tehsil Adampur, District Hisar and the plaintiff is maintaining his residence along with his children therein and has got an electric connection and also water supply connection and has also erected flour mill, and has also erected ginning machine and the defendants who are bent upon to take forcible possession of said house, therefore, defendants be restrained from taking over forcible possession or from interfering in the possession of plaintiff over the suit

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house, on the basis of evidence oral and documentary nature."

The case of the plaintiff, as it emanates from the pleadings, is that a plot measuring 15 marla bearing No.371 situated in village Moda Khera, Tehsil Adampur, was owned by Manphool (father of appellant), Naurang and Mann Singh respondents in equal shares. Manphool has since died. Respondent-Naurang gave his share to the appellant for a sum of ₹2700/- vide writing dated 23.10.1990 and handed over possession to plaintiff, who had constructed his house over the said plot and is living there with his family. He had also taken the electric and water connection over this plot and installed *Atta Chakki* and cotton spinning machine. As the respondent threatened to take forcible possession, the plaintiff had no option but to seek relief as prayed in the suit.

Respondent No.1-Naurang in his separate written statement denied the claim of plaintiff that his share comprising of 5 marla plot was sold vide writing dated 23.10.1990 to plaintiff. He alleged that he had 1/3rd share in the plot over which no construction has been raised by the plaintiff-appellant.

Respondent No.2 in his separate written statement took the plea that he had no concern with the disputed property in this case and has been wrongly impleaded. He, however, alleged that over the plot measuring 10 marla a house has been constructed by the plaintiff and respondent No.1 Naurang and the same is ownership and possession of both. About his 1/3rd share measuring 5 marla he has submitted that the same was already sold by him to one Bhoop Singh son of Amit Lal.

The trial court dismissed the suit with the observations as follows :-

i) *Father of appellant, Manphool, had 1/3rd share in the plot to extent of 5 marla.*

ii) *The plea of appellant that he had purchased 5 marla land belonging to defendant No.1-Naurang vide writing dated 23.10.1990 (Annexure P-1) for a consideration of ₹2700/- cannot be accepted as for the purchase of property having value of more than ₹100/- registered*

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sale deed is required.

iii) *The electricity bill and photographs produced on record were discarded as evidence of possession and it was observed that the plaintiff had failed to prove that he had become owner of the land of the share of defendant No.1 or had taken possession of the same.*

The first appellate court found no merits in the plea of appellant and observed that the writing dated 23.10.1990 (Ex.P1) carries no value being not a registered document. The first appellate court further observed that the plot owned by plaintiff and defendant No.1 had not been partitioned between the parties, therefore, possession of plaintiff over the plot of defendant No.1 may be as co-sharer and even if it be taken that plaintiff is in possession of disputed plot owned by defendant No.1, no injunction can be granted against defendant No.1 being the owner of disputed land. It was observed that in absence of any evidence that plaintiff- appellant had become owner of disputed plot, the defendant No.1 continued to be owner of his share of 5 marla in suit property.

Learned counsel for appellant has argued that Naurang Singh had left the village and gave this plot to appellant-plaintiff vide writing Ex.P1. Even if the title of this plot has not passed to the appellant vide writing Ex.P1 still plaintiff who has proved his possession over the suit plot is entitled to relief of injunction.

The facts as proved on record are that plaintiff is alleging his title over the suit property on the basis of writing Ex.P1. This fact has not been disputed during the course of arguments that this writing in no manner confer any title with regard share of defendant no.1 in the suit property on plaintiff. The resultant effect of the same is that plaintiff Naurang Singh continued to be owner of 5 marla share in plot/house in dispute.

The first appellate court has examined the case from two angles. Firstly, whether possession of plaintiff over suit property was proved and secondly, even if the plaintiff is proved to be in possession whether he is entitled to the relief of injunction.

While discussing possession of plaintiff, the first appellate court observed in para no.19 of the judgment which reads as follows :-

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> *"19. However, in the considered opinion of this court also this writing Ex.P1 dated 23.10.1990 can not be relied upon by the plaintiff either to show the title or to prove possession over the disputed plot. The site plan Ex.P1 and affidavit Ex.P3 for seeking connection of electricity moved by plaintiff with the Electricity Department as well as photographs Ex.PW2/1 to Ex.PW2/7 are not the documents of title or to prove the possession of plaintiff over the disputed plot because the plaintiff is already owner of 5 marlas of disputed plot no.371 wherein he has constructed the house and residing therein. Hence, these documents may be pertaining to the area owned by plaintiff himself and not of the disputed plot owned by defendant no.1."*

Learned counsel for appellant has referred to the statement of DW-1 Balwan wherein he has stated that plot of Naurang measuring 5 marla is in possession of plaintiff-appellant, who now possesses 10 marla of plot. He has further stated that for the last 15-20 years, the plaintiff has constructed his house over the plot and is in possession of the same. Naurang defendant-respondent No.1 while appearing as DW-2 has stated that his plot of 5 marla is now part of plot of Ram Kumar appellant. He has also admitted that in the front portion of the house of Ram Kumar a wheat grinding machine has been installed and one shop and a room had been constructed there. The plaintiff produced and proved on record site plan of suit property as Ex.P2 and has also placed on record photographs Ex.PW2/1 to PW2/7. The site plan and the photographs show that there is a house at the spot having one entrance reflecting that plaintiff is now in possession of suit property. Despite all this, the first appellate court has rightly relied on the observation of Hon'ble Supreme Court in case titled as ***Premji Ratansey Shah alnd others vs. Union of India and others,*** *1994 H.R.R. 627* while recording finding that even if the plaintiff is in possession of the disputed property, his possession is as co-sharer and the relief of injunction cannot be allowed to him against true owner.

As a result of above discussion I find no factual or legal

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infirmity in the judgment of court below, calling for any interference. The intention of plaintiff/appellant while filing the present suit was not to claim the relief of permanent injunction rather to seek declaration that he is in possession of 10 marla plot as owner. From the facts and evidence on record, as discussed above, it is proved that plaintiff is owner of only 5 marla out of suit property. The remaining 5 marla plot is owned by his uncle Naurang.

No substantial question of law requiring determination arises in this appeal.

This appeal has no merits and is dismissed.

August 17, 2015 **(Surinder Gupta)**
deepak **Judge**

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