

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.5415 of 2012
Date of decision 19.05.2015.

Balwant Singh

..... Appellant.

versus

State of Punjab and another

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

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?

Present : Mr. K.S.Boparai, Advocate for the appellant.

K.C.PURI, J.

This is a regular second appeal directed by plaintiff/appellant against the judgment and decree dated 22.03.2011 passed by Shri Karamjit Singh, Additional District Judge, Ludhiana vide which the appeal preferred by plaintiff/appellant against the judgment and decree dated 08.09.2009 passed by Shri Yukti Goyal, Civil Judge (Junior Division), Ludhiana was dismissed.

2. Briefly stated Balwant Singh plaintiff filed suit for declaration and permanent injunction with the allegations that he is in possession of land measuring 14Kanals 12Marlas fully described in the heading of the plaint for the last fifteen years. Possession of the plaintiff has been recorded

in the revenue record from Sauni 1974 onwards. Possession of the plaintiff over the suit property is continuous, uninterrupted, hostile open to the knowledge of the State of Punjab and of Irrigation Department and he has been cultivating the property without paying anything and as such he has become owner of the suit property by way of adverse possession. Notice under Section 80 of the CPC was issued upon the defendants on 28.03.2007 which was received by the defendants on 04.04.2007, but the defendants have not admitted the claim of the plaintiff, hence the suit.

3. Upon notice, defendants filed written statement taking preliminary objections regarding maintainability misjoinder and nonjoinder of necessary parties ; suit being not properly verified under Order 6 Rule 15 CPC. It is further alleged that possession of the plaintiff is not continuous, uninterrupted, hostile and open to the knowledge of answering defendants and in fact the land was given to the plaintiff in an open auction being the highest bidder for the year 1986-87 for specific period of one year only and after that plaintiff has an unauthorized possession over the suit land and there is contested litigation between the parties under the Punjab Public Premises Land Eviction and Rent Recovery Act, 1973 to vacate the land in dispute and recovery of rent. On merits, defendant denied the allegations of the plaintiff and prayed for dismissal of the suit.

4. In the replication filed by the plaintiff, the averments of the plaint were reiterated and those of the written statements were controverted.

5. From the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled for declaration, as prayed for ? OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP
3. Whether the suit of the plaintiff is not maintainable ? OPP .
4. Whether the plaintiff has not come to the court with clean hands ? OPD
5. Whether the suit is bad for misjoinder and nonjoinder of necessary parties ? OPD
6. Whether suit of the plaintiff has not properly verified as provided U/O 6 rule 15 CPC?OPD
7. Relief.

6. The parties have led their respective evidence on the aforesaid issues. After appraisal of the same, the trial Court vide judgment and decree dated 08.09.2009 dismissed the suit of the plaintiff with costs .

7. Feeling dissatisfied with the aforesaid judgment and decree dated 08.09.2009, the plaintiff-appellant has directed the First Appeal, which was dismissed by learned Additional District Judge, Ludhiana vide judgment and decree dated 22.03.2011 after re-appraisal of the evidence.

8. Still feeling dissatisfied with the judgment and decree dated 08.09.2009 and judgment and decree dated 22.03.2011, the present regular second appeal has been directed.

9. The plaintiff-appellant in paragraph No.06 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (i) Whether the entries in the khasra girdwaries are reliable

evidence to prove the factum and nature of possession of the plaintiff over the agricultural land ?

- ii) Whether the open, continuous and hostile possession of the plaintiff over the suit land for the last more than thirty years ripens into ownership ?
- iii) Whether the appellate court has committed perversity and illegality by relying upon the observations of the revenue officer which are proved to be against record ?
- iv) Whether the entries made by the respondents in the cash book without any corroboration by the documents duly signed by the plaintiff can be the basis of the impugned judgment ?
- v) Whether mere filing of the ejectment proceeding against the plaintiff comes in way of the plaintiff to claim adverse possession over the suit land ?

10. I have heard learned counsel for the appellant and have gone through the case file.

11. The learned counsel for the appellant is fair enough to concede that in view of the authority of Hon'ble Apex Court in **Krishananda vs. Kattu Siva Ashram reported in 2007 AIR (SCW) page 1177**, suit for declaration on the basis of adverse possession is not maintainable. However, the counsel for the appellant has submitted that plaintiff cannot be dispossessed except in due course of law. Both the courts below should have decreed the suit of the plaintiff for injunction in view of the authority **Gurudwara Sahib vs. Gram Panchayat Village Sirthala and another reported in 2013 (4) RCR(Civil) page 703**.

12. I have carefully considered the said submission but do not find any force in that submission.

13. From the perusal of the record, it is revealed that eviction order has been passed under Section 4(1) of the Punjab Provincial Land

Acquisition and Rent Recovery Act, 1973. Previously, the appeal was stated to be pending before the Collector (Deputy Commissioner, Ludhiana) against the order of eviction. It is also admitted by the counsel for the appellant that said appeal has already been dismissed.

14. So, in these circumstances, since the plaintiff has been found to be in unauthorized possession and decree for eviction has been passed under the Public Premises Act and as such no injunction can be granted. However, appellant cannot derive benefit of authority **Gurudwara Sahib vs. Gram Panchayat Village Sirthala and another's case (supra)** as in that case no eviction order was passed under the Public Premises Act and as such under those circumstances, the decree of injunction was passed. After passing the decree of eviction, the plaintiff has no right to remain in the property of the Government. Otherwise also, the Courts are deemed to be guardian of the Government property and no injunction can be granted against true owner. So, I have no hesitation in holding that no question of law much-less substantial question of law has arisen in the present appeal.

15. Consequently, the appeal preferred by the plaintiff/appellant is without any merit and the same stands dismissed.

16. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

May 19 , 2015
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