

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA No.616 of 2012.

Decided on:-May 28th, 2015.

Avtar Singh.

.....Appellant.

Versus

Kuldeep Singh.

.....Respondent.

CORAM: *HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.*

Present:- Mr. Surinder Mohan Sharma, Advocate
for the appellant.

Mr. Ranjit Saini, Advocate
for the respondent.

Dr. Bharat Bhushan Parsoon, J.

Vide this Regular Second Appeal, challenge has been made to judgment and decree dated 10.12.2011 of District Judge, Hoshiarpur vide which setting aside judgment and decree dated 24.12.2009 of the lower court, counter-claim of the defendants was accepted.

2. Appellant-plaintiff had filed a suit for permanent injunction restraining the respondents as also Narain Singh, Balwant Singh and Surinderpal Singh from interfering in possession of the plaintiff over the suit land comprised in Khasra No.32//63 (1-18) as per Jamabandi for the year 2002-03.

3. The respondents did not contest the claim of the plaintiff and manifested their clear intention not to interfere in possession of the plaintiff over the suit land, whereupon the plaintiff made a statement in the lower court to the effect that the suit had become infructuous. Consequently, the suit was dismissed as such. In the said suit, the respondents had filed a

counter-claim to the effect that the plaintiff, now appellant in this appeal, should be restrained from interfering in their possession over Khasra No.32//62 (0-15) as per Jamabandi for the year 2002-03.

4. On the basis of pleading of the parties, following issues were framed by the lower court:

1. Whether the plaintiff is joint owner in possession of the suit land, detailed in the head note of the plaint and is entitled to injunction as prayed for? OPP
2. Whether the plaintiff has cause of action to file the present suit? OPP
3. Whether the defendant/counter claimant is entitled to decree as prayed for? OPP
4. Relief.

5. After receiving oral as well as documentary evidence led by the parties and providing a hearing to their respective counsel, learned lower court had held that since the suit of the plaintiff has become infructuous and the same has been dismissed as such, there is no need to give findings on issues No.1 and 2. However, issue No.3 was decided against the counter-claimant/defendant No.1 and in favour of the plaintiff and as such, counter-claim was also dismissed by the lower court vide judgment and decree dated 24.12.2009.

6. Though the lower court had not considered it necessary to grant any relief to the defendants, in appeal preferred by them, accepting their counter-claim, relief was granted to them by the first appellate court vide judgment and decree dated 10.12.2011.

7. Now, it is claimed by the appellants that the said verdict of the first appellate court is neither valid nor legal as Surinderpal Singh, key participant from the defendants had not even entered the witness box to depose about possession. It is claimed that if he was not in possession, his

transferees cannot claim proprietary or possessory title better than what their transferor had. It is, rather claimed that Surinderpal Singh was not even resident of the village, what to talk of his possession. Consequently, adjudication made by the first appellate court on issues No.1 to 3 is claimed to be invalid and wrong. Reversal of the first appellate court's verdict has been sought.

8. Counsel for the respondent, on the other hand, has urged that not only the revenue record but even the oral as well as documentary evidence sustains and supports the case of the respondent-defendant and his associates and thus, there is neither any substantial question of law needing determination nor there is any merit in this appeal.

9. After hearing the counsel for the parties, following substantial questions of law need determination by this Court:

- (i) Whether the learned first appellate court has misread the oral and documentary evidence available on the file and has misread and misinterpreted the documentary and oral evidence available on the record?
- (ii) Whether the agreements Ex.P1 and Ex.P2 could be taken into consideration for want of stamp and registration and also on the ground that they are not duly proved on record?
- (iii) Whether Surinderpal Singh was competent to execute Ex.P1 and Ex.P2 particularly when he was not a proprietor of the village?
- (iv) Whether a non-proprietor has any right of ownership or possession over the land, which is Shamlat Patti, which belongs to the proprietary body of the village?
- (v) Whether the learned first appellate court could entertain the appeal without impleading all the parties which were arrayed before the learned trial court?

10. Admittedly, Khasra No.32//62 (0-15) and Khasra No.32//63 (1 K 18 M) adjoin each other. Even otherwise, perusal of Jamabandi for the

year 2002-03 and Aks Sajra (Ex.RA) shows that these Khasra numbers adjoin each other.

11. In view of statement made by the defendant on 3.11.2004 to the effect that he will not interfere/dispossess the plaintiff from Kharsa No.32//63, the suit was dismissed as having become infructuous.

12. Now, in this case, claim of defendant Kuldeep Singh is that since Surinderpal Singh defendant No.2 had executed an agreement to sell dated 12.5.2004 (Ex.P1) and that he had received Rs.2,80,000/- at the time of execution of the said agreement to sell in the presence of Hardayal Singh Panch and Jatinder Singh of village Dehriwal and he was put in actual possession of the suit land. Kuldeep Singh (CCW1) appeared in the witness box to prove his case regarding execution of agreement to sell, payment of sale consideration to Surinderpal Singh respondent and about taking of physical possession of Khasra No.32//62. His statement is corroborated by Bahadur Singh (CCW2) who is collateral of Surinderpal Singh, defendant No.3.

13. Very basis of the claim of defendant Kuldeep Singh respondent is the agreement to sell which has been proved by him and his witness, Bahadur Singh. Though execution of agreement to sell does not confer any right, title or interest in the suit property, yet, when the said agreement has been made, it has a binding effect. In this regard, Section 53A of the Transfer of Property Act, 1882 reads as under:-

“53A. Part Performance. – Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the proeprty or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferee or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

14. Moreover, even according to sub-section 2 of Section 17 of the Registration Act, 1908, sale of immovable property does not require registration of such document in recital of payment of any earnest money. Explanation to sub-section 2 of Section 17 of the Registration Act, 1908 reads as under:

“Explanation. – A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.”

15. According to Ex.RE and Ex.RF, copies of Jamabandi for the year 1992-93 and for the year 2007-08 respectively, Khasra No.32//62 (0-15) is owned by Shamlat Patti Dehri Jattan and the same is in possession of Surinderpal Singh son of Daljeet Singh as shareholder wherein kind of the land is shown to be Gair Mumkin or Tuar. As per death certificate Ex.RG, Surinderpal Singh, respondent No.3 died on 18.11.2007. Copies of Jamabandies for the years 1977-78, 1982-83, 1987-88, 1992-93, 1997-98, 2002-03 i.e., Ex.D8, Ex.D7, Ex.D6, Ex.D5, Ex.D4 and Ex.D3 respectively, also show that rectangle No.32 is owned by Shamlat Patti. Perusal of Jamabandies i.e. Ex.D8 and Ex.D7 shows that Daljeet Singh and Kuldeep

Singh sons of Amar Nath have been shown in joint possession as Gair Morusi in equal shares and kind of the land is shown as Gair Mumkin Taur. In the Jamabandi (Ex.D6), possession of Daljeet Singh and Baldev Singh has been shown. Daljeet Singh is father of Surinderpal Singh defendant No.4. In the copy of Jamabandi Ex.D5 possession of Surinderpal Singh son of Daljeet Singh as shareholder has been shown. Further, in Jamabandies Ex.D3 and Ex.D4 also, Surinderpal Singh has been shown in possession of the land and land is described as Gair Mumkin Abadi. Copy of Khasra Girdawari i.e. Ex.D9 from Kharif 2003 to Rabi 2008 shows that land in dispute is in the ownership of Shamlat Patti Dehri Jattan and is in possession of Surinderpal Singh son of Daljeet Singh as a shareholder. Further, in Kharif 2003, the land is shown to be agricultural and crop sown therein has been shown as Chari Charan. During the remaining period, it has been shown to be vacant.

16. From oral as well as documentary evidence as produced earlier by defendant No.1-respondent Kuldeep Singh, it is amply proved on record that agreement to sell (Ex.P1) was duly executed by Surinderpal Singh, defendant No.3, by virtue of which possession of Khasra No.32//62 (0-15) was transferred in favour of Kuldeep Singh defendant-respondent. Part of the agreement to sell has been performed by Surinderpal Singh and as such, the agreement to sell has a binding effect, as already mentioned in explanation of sub-section 2 of Section 17 of the Registration Act, 1908, even if said agreement is an unregistered document.

17. The argument advanced by counsel for the appellant that since Surinderpal Singh who had allegedly executed the agreement to sell and had delivered the possession of aforesaid Khasra number to Kuldeep Singh defendant-respondent, has not even appeared in the witness box, adverse inference should be drawn against the defendants, is not sustainable because said Surinderpal Singh died on 18.11.2007 and his collateral Bahadur Singh

(CCW2) appeared in the witness box and duly corroborated the case of the defendants-respondents. On the other hand, plea of the respondents that Bahadur Singh and Jasbir Singh etc. were the proprietors of Shamlat Patti and they had executed the agreement to sell copy of which is Ex.RW3/A in favour of Avtar Singh appellant, who is in possession of the suit land, is not proved by any documentary evidence. Rather in the revenue record, they have not at all been shown in possession much less as proprietors of Shamlat Patti. Much stress has been laid by the plaintiff-appellant that since Surinderpal Singh defendant was not residing in village Dehriwal for the last 20 years and he had no ration card or voter card in the said village, he could not be said to be proprietor/shareholder in the Shamlat Patti and was also not in possession of the disputed Khasra number. It is not denied that initially, defendant No.3 Surinderpal Singh was resident of village Dehriwal. Even in the plaint dated 19.4.2004 Surinderpal Singh defendant had shown his residence at village Dehriwal initially and now, at village Bassi Gulam Hussain, Chand Nagar, Gali Lambran Wali, Tehsil and District Hoshiarpur. Moreover, non-residing of any proprietor/share holder in the village of location of Shamlat Deh does not divest him of his right, share and possession of the land. Rather, it is proved from the documentary evidence brought on record by respondent No.1 that Surinderpal Singh, defendant No.4 was in possession of the disputed Khasra number and on the basis of agreement to sell Ex.P1, he had delivered possession of the suit land.

18. On the one hand, the appellant-respondent pleaded that Surinderpal Singh, defendant No.4 has no right, title or interest with land and that he was not even in possession of the disputed Khasra number whereas on the other hand, admittedly, the appellant-respondent had not made any application whatsoever to the revenue authorities for correction of the revenue record in which upto 2008 possession of Surinderpal Singh, defendant No.4, has prominently been shown. Presumption of truth is admittedly attached to the revenue record i.e. Jamabandies unless the same is

rebutted. In this case, the plaintiff-respondent has not been able to rebut the said presumption of truth by leading cogent and convincing evidence regarding possession over the disputed Khasra number.

19. In view of the above discussion, findings recorded by the first appellate court do not suffer from any error of law or fact. Rather, the same are sustainable and are affirmed. All the substantial questions of law are answered against the plaintiff-appellant and in favour of the defendant-respondent.

20. Consequently, the regular second appeal filed by the plaintiff, appellant herein, having no merit is dismissed. Decree sheet be prepared.

May 28th, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes