

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 341 of 2013(O&M)
Date of decision :February 18th, 2015

Harmail Singh and another

..... Appellants

Versus

Jarnail Singh and others

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Bhoop Singh, Advocate
for the appellants.

Ms. Promila Nain, Advocate
for the respondents.

1. Whether reporters of local papers 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?

Amit Rawal, J.

This Regular Second Appeal at the instance of the appellant-defendant Nos.2 and 5 is directed against the judgment and decree dated 9.10.2012 passed by the Additional District and Sessions Judge, Ludhiana whereby the appellant-defendant Nos.2 and 5 have been restrained from dispossessing the respondents-plaintiffs forcibly from the suit property except in due course of law and the judgment and decree dated 23.2.2010 of the trial Court, whereby the suit of the respondent-plaintiff was decreed, has, thus been set aside.

Before referring to the submissions of the learned counsel for the parties, it would be apt to give brief preface of the controversy between the parties to the *lis*.

The respondents-plaintiffs filed a suit for permanent injunction restraining the defendants themselves or through their agents/servants and attornies from dispossessing from the plot measuring 8 Marlas as shown red in the site plan situated in Village Mangli Tanda, Tehsil and District Ludhiana forcibly or illegally except in due course of law.

In paragraph 1 of the plaint it was stated that the suit property is in physical possession of the plaintiff and the same is used for his residence purpose but few years back the plaintiff shifted himself to Mand area and defendants during the absence of the plaintiff made a plan to capture the property of the plaintiff. It was further stated that the suit property was previously joint with Mohinder Singh-defendant No.3 who is the cousin brother of the plaintiff and Mohinder Singh sold his right in the property to the plaintiff in the presence of Panchyat for a sum of ₹4300/- and brother of the plaintiff namely Joginder Singh had also sold his share in the suit property of 2 Marlas by exchanging his property and got the property from the plaintiff in Mand area and thus the suit property was in ownership and possession of the plaintiff. However since the price of the property had increased the defendant with mala fide intention on 16.3.1994 came to the suit property to forcibly take the possession of the suit property but since the appellant-defendants acquired the knowledge and therefore saved the possession.

The aforementioned averments made in the plaint were rebutted by the defendants by filing a written statement on the ground that the plaintiffs misrepresented and suppressed the true

facts from the knowledge of the Court. In fact the plaintiff was neither owner nor in possession of the part of the suit land and the suit was barred by the principle of res judicata as the earlier suit was dismissed on 5.1.1994. On merit it was stated that defendant Nos. 2 and 5 are in absolute possession of the property in question as half of the share was purchased by them from defendant Nos. 3 and 4 vide sale deed dated 14.2.1993 and other half was purchased by them from Joginder Singh and his son vide agreement to sell dated 6.4.1994. The land in question was and is in physical possession of defendant Nos. 2 and 5 and surrounded by 4 feet height boundary wall and Toka Machine had been installed and even cattle of defendant Nos. 2 and 5 were also tied in said plot.

The factum of alleged sale of land by Mohinder Singh through Panchayat was denied. Rather it was also stated that no such document of title had been placed on record. The aforementioned written statement was controverted by the appellant-defendants by denying the averments made in the written statement and the averments in the plaint were reiterated. Since the parties were at variance the learned trial court framed as many as four issues including the issue of relief. For the sake of brevity the same are extracted hereinafter:-

- “1. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP
2. Whether the suit is not maintainable in the present form?OPP
3. Whether the suit is barred by principles of

resjudicata?OPP

4. Relief”

It is pertinent to mention here that the suit aforementioned was filed in 1994.

The respondents-plaintiffs in support of their case examined PW-1 Karam Singh, PW-2 Mangal Singh, PW-3 Jarnail Singh, PW-4 Malkiat Singh and PW-5 Major Singh and thereafter closed their evidence.

Whereas on the other hand the appellants-defendants examined DW-1 Harmail Singh, DW-2 Mukhtiar Singh, DW-3 Ranjit Singh and closed their evidence.

During the pendency of the case a Local Commissioner was appointed by the trial court who visited the site and made a report. The order of the trial court and report of the local Commissioner is extracted hereinbelow:-

“Present: counsel for parties.

During the course of arguments both the parties have stressed upon appointing L.C to assess as to the actual state of affairs at the spot. Under these circumstance, their request is accepted. She. Jatinder singh Mahal is appointed L.C.who is directed to visit the spot to submit his report as to actual state of affairs on or before 16.8.94. His fee is fixed at Rs.400/- to be paid equally by the both parties.

Adjourned to 16.8.1994 for filing report and for consideration.”

Report of the Local Commissioner:

I was appointed as Local Commissioner by this

Hon'ble Court with a direction to visit the spot and to submit the report as to actual state of affairs. As per the order of this Hon'ble Court I visited the site in dispute on 13.8.1994 at about 1.00P.M I have collected the copy of plaint from the counsel of the defendants.

My observations are as under:-

The property in dispute which is 8 Marlas is situated at Village Mangli Tanda, the.& Distt. Ludhiana. The boundaries are as under:-

East: Huka Singh and Budh Singh

West: Amar Singh

North: Labh Singh

South: Amar Singh

I have prepared the presence sheet at the spot and got appended the signatures and thumb impressions of the persons present at the spot at the time of my visit. The persons present at the spot saying that the defendants are in possession of the property in dispute for the last about 28/30 years. They were also saying that the plaintiff/Dhana Singh is not residing in the Village Mangli Tanda but he is an resident of Village Mattewara, Distt. Ludhiana. The defendants are in possession of the plot measuring 8 Marlas. One Toka machine, Thresher, Tractor Trolley of the defendants were lying in the property in dispute. Two koops were lying in the property in dispute, of the defendants. Hence this report."

The onus to prove issue No.1 was on the respondent-plaintiff. The respondent-plaintiff in order to prove the alleged purchase before the Panchayat brought on record the document as Ex.P-2 which is nothing but a certificate issued by the

Sarpanch and other Panches of the Gram Panchayat to show that the plaintiff had purchased the part of the suit property from defendant No.2. However, the said document did not bear the signatures of Mohinder Singh. Trial court on the basis of documentary evidence dismissed the suit of the respondent-plaintiff on the premise that the respondent-plaintiff did not prove the possession from the disputed property, much less the ownership. However the appellate court in an appeal taken by the respondent-plaintiff decreed the suit of the respondent-plaintiff by setting aside the judgment and decree of the trial court by holding that defendant Nos. 2 and 5 failed to connect to Ex. D1 and Ex.D-2 with the disputed property. It is in these circumstances the aforementioned Regular Second Appeal has been filed by the appellants-defendant Nos. 2 and 5.

Mr. Bhoop Singh, learned counsel for the appellants-defendant Nos. 2 and 5 in support of grounds of appeal submitted that the respondent-plaintiff did not discharge the burden qua the relief of permanent injunction, for, seeking such relief and both oral and documentary evidence is required to be produced on record to show that plaintiffs are/were in possession of the property in dispute, dehere of the fact that the plaintiff failed to prove even the title. He further submitted that no documentary evidence has come on record to show that the respondent-plaintiff had been in possession of the property to claim the injunction as prayed for. Even Ex. P-2 a certificate issued by the Gram Panchayat was not registered document and cannot confer a title upon the plaintiff. The

admission of daughter of Mohinder Singh qua the ownership of the property in favour of plaintiff can be said to have not proved the case of the plaintiff. He further submitted that the Local Commissioner had been appointed with the consent of both the parties who after inspecting the site and gave report that appellants-defendants were in possession and Toka Machine had been installed. He further submitted that as per averments made in para 1 of the plaint, plaintiffs admitted that he had shifted to Mand area. He further brought to the attention of this Court to averments of para No.1 of the plaint to show, admission of the plaintiff, that he had shifted to Mand area.

Ms. Promila Nain, learned counsel appearing on behalf of the respondent-plaintiffs in support of her averments contended that the report of the Local Commissioner was not in consonance with the order of the trial court. He was only directed to ascertain the state of affairs. She further submitted that objections have been filed to the report of the Local Commissioner which had not been decided. She further pointed out to the statement of the witnesses PW-3, PW-4 and PW-5 to contend that all the witnesses have corroborated the version of the plaintiff to prove that the plaintiff was in possession of the property in dispute.

She further pointed out that the dimensions mentioned in the sale deed Ex. D-1 of the defendants was different to the dimensions as stated in the plaint. In support of her submissions she relied upon the following authorities to contend that a person who is in possession of the property even if he does not have a title

but can seek the injunction against the defendants from disturbing the possession and in essence the person who is found to be in settled possession cannot be dispossessed except in due course of law. M. Kallappa Setty Vs. M. V. Lakshminarayana Rao AIR 1972 SC 2299, Sadashiva Devadiga Vs. Muddu Devadiga 2006 (3) Civil Court Cases 407 (Karnatka), Abdul Latif and others Vs. Nagar Vikas Pranyas, Udaipur 2007 (1) CCC 310, Moorti Shri Adeshwar Bhagwan Vs. Shimbhunath Singh 2007 (1) CCC 315 (Rajasthan), Hukam Singh Vs. Tara Singh and others 1992(CCC 771 (P&H)), Abdul Latif and others Vs. Nagar Vikas Pranyas, Udaipur 2007 (5) RCR 409, Ram Murti Goyal, Advocate and others Vs. Smt. Basant Kaur and others 1991(2) RRR 142, Smt. Ulfat Vs. Hardeep Singh 2011 (4) PLR 340, Channan Singh Vs. Ved Parkash Goel, 1995 (2) PLR 114 (P&H), Mahabir Vs. Surta 2006 (2) RCR (Civil) 153, Sharanjit Singh Vs. Raghu Nath 2013 (3) PLR 91.

Mr. Bhoop Singh, learned counsel appearing on behalf of the appellants-defendant Nos. 2 and 5 in rebuttal submitted that respondents-plaintiffs have failed to lead any evidence in the suit and the suit of the plaintiff was liable to be dismissed as plaintiff has to stand on his own legs, assuming the fact that the respondents-plaintiffs did not lead any evidence and thus urged that following substantial questions of law arise for adjudication of this Court:-

- i) Whether formal proof of a document is dispenses with merely its exhibition?
- ii) Whether unproved documents through Exhibited

can be taken into consideration?

iii)Whether the plaintiff is to stand on his own legs to prove his case?

iv)Whether the Id. Ist appellate court erred in not taking into consideration the material evidence and pleadings?

I have heard learned counsel for the parties, appraised the impugned judgments and decrees of both the courts below and also appraised the record with the assistance of the counsel for the parties and is of the view that the appeal is liable to be allowed for the following reasons.

There is no dispute to the case law referred to above but all the judgments have been rendered after the appreciation of evidence where either of the parties to the lis proved long and settled possession, but however, in the instant case no such evidence has come on record. In present case plaintiff has failed to prove long and settled possession in order to seek the relief of permanent injunction. Therefore the aforementioned judgments would not come to the rescue of the respondents-plaintiffs.

It is settled proposition of law that the plaintiff has to stand on his own legs in order to prove the averments made in the plaint. In the instant case, no documentary evidence has come on record to show and prove that respondents-plaintiffs had been in possession of the property in dispute. The certificate of the Sarpanch Ex.P-2 would not confer any title upon the plaintiffs in respect of the

alleged sale of land measuring 4 Marlas from Mohinder Singh. The statement of daughter of Mohinder Singh that her father sold the suit property to plaintiff-Dhanna Singh vide writing Ex.P-2 being unregistered document would not confer title and ownership in favour of the plaintiff whereas on the contrary defendants have proved the sale deed dated 16.3.1994 and agreement to sell dated 6.4.1994. The plea that no case for seeking specific performance of the agreement to sell (ibid) vide which appellant-defendants have alleged to acquire 2 Marlas of land had been filed by the defendants against the vendor would not give any benefit to the plaintiff as he was not a party to the said agreement to sell. The plaintiff has also failed to prove the alleged exchange of area of 2 Marlas with Joginder Singh who is alleged to have been given some land in Mand area except the bald averments in the plaint.

The lower appellate court has failed to notice the aforementioned facts and position of law and thus committed illegality and perversity in decreeing the suit of the respondents-plaintiffs. The finding of the lower appellate court that Ex. D-1 and Ex.D-2 do not connect the property with the disputed property do not have any foundation and substance as the plaintiffs have failed to give the exact dimension of the property except the bald averments in the plaint. In order to prove that the respondent-plaintiff was actually in possession of the property with the dimension given in the suit, it was incumbent upon the plaintiff to lead and prove the same by leading direct and cogent evidence i.e by producing on record the revenue record but since the property situated in Abadi deh plaintiffs

could have taken the assistance of the revenue officials to demarcate the property and give actual description. The plaintiff also did not prove on record any document like voter card, ration card or some other document to prove his possession much less photographs. The plaintiff, it appeared since did not have any documentary proof to show his possession, conceived an illegal design by filing the suit by impleading six defendants. Defendant Nos. 3 (i) i.e. Legal representative of Mohinder Singh and defendant No.6 conceded the claim of the plaintiff by conceding plea of injunction. Such an evil decision of the plaintiff was liable to be dissuaded, but for the reasons best known to the appellate court, the appellate court did not ponder upon this aspect. On the contrary the appellants-defendant Nos. 2 and 5 have proved the sale deed to show the ownership of land measuring 4 Marlas and its agreement to sell qua 2 Marlas. It is between the vendor and vendee of the agreement to sell Ex.D-2 as to whether either of the party was aggrieved of non-performance of terms and conditions of agreement to sell. The plaintiff cannot be permitted to raise such an issue. It is important to notice a very important fact that in the head of plaint, the suit property has been described as plot, but in all paras of the plaint in a very guarded language it has been described as suit property. The plaintiff alleged that he used the premises for residential purpose is thus self contradicting to the averments made in plaint. The objections to the report of Local Commissioner, would thus, be meaningless much less futile to ponder.

In view of what has been observed above, the

question of law is thus answered in favour of the appellants-defendant Nos. 2 and 5 and against the respondents-plaintiffs.

Accordingly the appeal is allowed.

The judgment and decree of the lower appellate court suffers from illegality and perversity and is thus hereby set aside and accordingly the suit of the respondent-plaintiff is dismissed.

Decree sheet be prepared.

(AMIT RAWAL)
JUDGE

February 18th , 2015
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