

In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No. 3478 of 2013 (O&M)
Date of decision: 2.12.2015

Umar Mohammed and another

.....Appellants

Versus

Ajeem and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Sachin Mittal, Advocate,
for the appellants.

- 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?*

Raj Mohan Singh, J.

CM No. 9384-C of 2013

For the reasons mentioned in the application, delay of 175 days in re-filing the appeal is condoned.

Application stands disposed of accordingly.

CM No. 9385-C of 2013

For the reasons mentioned in the application, delay of 28 days in filing the appeal is condoned.

Application stands disposed of accordingly.

R.S.A.No. 3478 of 2013

1. Defendants have filed the present regular second appeal against the concurrent findings of the Courts below in a suit for permanent injunction.

2. Plaintiff alleged that he is owner in possession of the suit land and the defendants are hell-bent to interfere in ownership and possession of the plaintiff without any right, title and interest.

3. On notice, defendants contested the suit and denied the ownership and possession of the plaintiff, rather claimed their possession since 50 years. There was no relinquishment of tenancy nor they were ever ejected. Entries since 1990-91 as *khudkast* were claimed to be wrong, illegal and without notice to the defendants. Defendants further alleged that they have already constructed two rooms in the suit property and are residing therein. Plaintiff never remained in possession of the suit land nor have any concern whatsoever.

4. From the pleadings of the parties, following issues were framed by the trial Court:-

“1. Whether the plaintiff is owner in possession of suit property as alleged ? OPP

2.If issue No.1 is proved, whether plaintiff is entitled to the relief of permanent injunction as prayed for ?
OPP

3. Whether suit is not maintainable ? OPD

4. Whether the plaintiff has no locus standi to file the present suit ? OPD

5. Whether the plaintiff has concealed true and

material facts from the court ? OPD

6. Whether plaintiff is estopped from filing present suit

? OPD

7. Relief.”

Parties led their respective evidence in support of their case on the aforesaid issues.

5. Trial Court decreed the suit vide judgment and decree dated 18.5.2011 and the same was upheld in appeal by the lower Appellate Court vide judgment and decree dated 21.9.2012. Hence, the present appeal by the defendants.

6. Learned counsel for the appellants has argued that the factum of earlier litigation has been concealed by the plaintiff. Learned counsel further stated that there was a civil suit titled “Tripal vs. Fakira etc.” and the plaintiff had the knowledge of pendency of the said suit, but he conveniently and intentionally concealed the same in the present suit, therefore, he has not approached the Court with clean hands. Secondly, as per learned counsel, defendants pleaded that their possession is continuous for the last more than 40 years and they have not relinquished their possession in any manner till date nor they have ejected by any competent Court/ authority. Entries in the revenue record have been wrongly recorded.

7. Apparently, previous suit titled as “Tripal vs. Fakira etc.” was not in the knowledge of the plaintiff because he was

not party to said suit. Tripal was in possession of the suit property. However, he relinquished his possession in favour of Fakira and others when Fakira purchased the suit property from its earlier owners. Tripal executed an affidavit in order to get the change effected in the revenue record in favour of Fakira and others. On the basis of said affidavit, revenue entries were duly changed vide rapat roznamcha No.75. On the basis of documentary evidence viz. Jamabandi for the year 2005-06, Ex.P-1, plaintiff has been shown to be owner in possession of the suit land. The aforesaid fact has been subsequently endorsed in the jamabandi for the year 2000-01. Entries have been recorded in favour of plaintiff Azeem. Similarly in khasra girdawari, Ex.P-3, for the crop Kharif 2006 to Rabi 2009, similar entries were made in favour of the plaintiff. Mutation Ex.P-4 was entered and sanctioned on the basis of sale deed in favour of the plaintiff. Ex.P-5 is the mutation entered in favour of Fakira, who sold the suit land to plaintiff. Rapat roznamcha, Ex.P-5 was recorded in which entries of khasra girdawaries were changed in favour of Fakira, on the basis of affidavit given by Tripal. Revenue record duly corroborated the factum of possession of the plaintiff being owner and since the date of effecting change in the revenue record on the basis of affidavit, long standing entries are in favour of Fakira. Fakira sold the land to the plaintiff and since then entries are continuing in favour of the

plaintiff, which is apparent from the revenue record and rapat roznamcha Ex.P-6.

8. Moreover, defendant Tripal (now deceased) filed an application for correction of khasra girdawari against the plaintiff and Fakira before Assistant Collector, IInd Grade, Ferozepur, which was dismissed vide order Ex.P-10. The said order was upheld in appeal vide order dated 28.4.2000, Ex.P-11, passed by Collector, Ferozepur Jhirka, which had already attained finality. Therefore, in view of aforesaid orders Ex.P-10 and Ex.P-11, the effort made by the predecessor of the appellants was negated. Virtually the entries were changed on lawful premise. When an affidavit was executed by Tirpal in respect of relinquishment of his possession in favour of Fakira and rapat roznamcha No.75 was recorded and change was effected in the revenue record, which has been proved by unimpeachable revenue record viz. Ex.P-1 to Ex.P-6, entries in the revenue record have presumption of truth and have not been rebutted by any cogent evidence by the defendants-appellants. Mere pendency of suit at the instance of defendants is no ground to dis-lodge the plaintiff in the present suit, who has been proved to be owner in possession by virtue of long standing entries in the revenue record. The decree for permanent injunction has been rightly passed in favour of the plaintiff on the basis of available material on record.

9. Learned counsel for the appellants has formulated substantial questions of law in para No.7 of the grounds of appeal, which in considered opinion of this Court do not arise at all. Question No.1 cannot be appreciated in view of the fact that in the earlier suit, plaintiff-respondent was not party to it, therefore, there cannot be any concealment of fact. Question No.2 is based on evidence, wherein it has been found that Tripal voluntarily executed an affidavit regarding relinquishment of his possession over the suit property, therefore, vide rapat roznamcha No.75, entries were duly changed in favour of vendor of the plaintiff. Therefore, question No.2 also does not arise. Question No.3 is a question of fact only and cannot be treated to be question of law much less substantial question of law. Question No.4 cannot be appreciated inasmuch as that the evidence on record has been rightly appreciated by the Courts below. Re-appreciation of evidence is not possible in regular second appeal. Even otherwise, the findings recorded by both the Courts below cannot be permitted to be result of misreading of evidence or having suffered with perversity.

10. Resultantly, I do not find any substance in the present appeal and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

December 02, 2015

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