

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1662 of 2015 (O&M)
Date of decision 09.07. 2015.

Karnail Singh

..... Appellant.

versus

Balwant Singh 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. Jagjit Singh, Advocate for the appellant.

K.C.PURI, J.

This is an appeal directed by plaintiff/appellant against the judgment and decree dated 02.09.2014 passed by Mrs. Mandeep Kaur, Additional District Judge, Kapurthala vide which the appeal preferred by the plaintiff against the judgment and decree dated 12.09.2013 passed by Mrs. Kiran Bala, Civil Judge (Senior Division), Kapurthala was dismissed.

2. Briefly stated Karnail Singh filed suit for permanent injunction in respect of land described in the heading of the plaint. It is alleged that Central Government is the owner of the land in dispute. Plaintiff is in actual possession since the times of his forefather i.e. 1970 i.e. for more than 38

years. Earlier the land was in the name of Shingara Singh and then in the name of Balwant Singh son of Gurdeep Singh. Gurdeep Singh never came into possession of this land. Gurbachan Singh father of plaintiff was in possession of the suit property and after his death the plaintiff is in peaceful possession of the land. However, Balwant Singh got entry in the revenue record in connivance with revenue official. The plaintiff is cultivating the land since long and had sown fodder and 'Till' crops. The plaintiff has also installed hand pump over there. Plaintiff filed an application for correction of khasra girdwari and reserved the right to file the suit. Defendants tried to take forcible possession. Hence this suit.

3. Defendant No.2 was served but he has not appeared and as such he was ordered to be proceeded ex-parte.

4. Plaintiff has not filed correct address regarding service of defendant No.1, in spite of so many opportunities and as such the suit against defendant No.1 was dismissed on 30.9.2010 under Order 9 Rule 2 of the CPC.

5. In ex-parte evidence, plaintiff himself stepped into the witness box examined as PW-1 and also examined Didar Singh as PW-2

6. The learned trial Court after appraisal of the evidence has given a finding that plaintiff has failed to prove his possession since 1970. Consequently, dismissed the suit vide judgment and decree dated 12.09.2013.

7. The plaintiff feeling aggrieved against the judgment and decree dated 12.09.2013 preferred the first appeal. The said appeal was also

dismissed vide judgment and decree dated 02.09.2014. The plaintiff/appellant has impugned the judgment and decree dated 12.09.2013 and judgment and decree dated 02.09.2014 in the present appeal.

8. The appellant in paragraph No.7 of the grounds of appeal, has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (i) Whether the permanent injunction can be denied when it is proved that the appellant is in actual physical possession of the suit land ?
- (ii) Whether the suit of the appellant can be dismissed when the same was not contested by the defendants ?
- (iii) Whether the suit of the appellant can be dismissed when there is no evidence to prove that the appellant is not in possession of the suit land ?

9. I have heard learned counsel for the appellant and have gone through the records of the case.

10. Learned counsel for the appellant has submitted that it is a mere suit for injunction. The evidence of the plaintiff goes unrebutted and as such suit of the plaintiff should have been decreed.

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

12. The plaintiff can succeed if he is able to prove that any substantial question of law has arisen in the present case. The evidence produced by the plaintiff is that Balwant Singh has entered into an agreement to sell the land for a consideration of Rs.1,50,000/- vide agreement and affidavit dated 16.05.2006. The trial Court has observed that

the plaintiff has concealed the material facts. In the plaint, he has pleaded that he is in possession since 1970 but in the evidence he has stated that Balwant Singh has entered into agreement and put him in possession. Admittedly, the plaintiff is not recorded in possession of the suit property. The land is owned by Central Government and Central Government has not been arrayed as party. In the revenue record, Balwant Singh has been recorded in possession but suit against him has been dismissed on 30.09.2010 under Order 9 Rule 2 of the CPC. In the absence of Balwant Singh, no decree can be passed. The plaintiff has not taken any step to summon Balwant Singh before the trial Court ; Lower Appellate Court or before this Court. So, in the absence of Balwant Singh and Central Government, no decree for injunction can be passed. So, I have no hesitation in holding that no question of law much-less the substantial question of law has arisen in the present appeal, more-so, when the the plaintiff is not in possession over the suit property.

13. Consequently the appeal preferred by the plaintiff/appellant is without any merit and the same stands dismissed in limine.

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

(K.C.PURI)
JUDGE

July 09 , 2015

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