

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.562- C of 2015 and
RSA No. 225 of 2015 (O&M)
Date of decision 03.09. 2015.

Channan Singh through Lrs

..... Appellants.

versus

Bachna and others

..... Respondent.

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. Jag Nahar Singh, Advocate for the appellants.

K.C.PURI, J.

This is an appeal directed by plaintiffs/appellants against the judgment and decree dated 01.08.2014 passed by Shri Jaspal Verma, Additional District Judge, (Adhoc) Fast Track Court, Hoshiarpur vide which the appeal preferred by the plaintiff against the judgment and decree dated 16.09.2011 passed by Shri G.S.Dhillon, the then learned Civil Judge (Senior Division), Garhshankar was dismissed.

2. Brief facts of the present case are that suit property marked as ABCD shown in red colour in the site plan as fully detailed in the head note of the plaint is comprised of Khasra No.481(0-7) which is part and parcel of Khewat No.168 Khatauni No.261 as shown in the jamabandi for the year

1997-98 of the village Bhajjal. Previously the plaintiff along with his brother Ram Singh was in possession of the suit property. Ram Singh brother of the plaintiff died in the year 1989. Plaintiff, therefore, claimed that he is now in exclusive possession of the suit property as 'Gair Marusi'. The plaintiff claims that nobody has interfered into his peaceful, lawful and continuous possession over the suit property. The plaintiff claims that he raised boundary wall in the suit property as shown in the site plan. The defendants who are strong persons have now started claiming that the defendant No.1 has become owner of the suit property on the basis of exchange deed. Hence this suit.

3. Upon notice defendants No.1 and 2 appeared and filed written statement taking preliminary objections regarding locus-standi to file the present suit ; having not come to the court with clean hands ; the site plan of the plaintiff is wrong and that the entries in the revenue record showing the plaintiff and his brother in possession of the suit site are prima facie wrong. On merits, it is submitted that Khasra No.481(1-7) was the ownership of Gram Panchayat of village Bhajjal. The plaintiff and his brother Ram Singh never had any concern with the said khasra number. The entries showing them in possession are wrong and against the existing position at the spot. The land comprised of Khasra No.481 was lower in level like toba. The Gram Panchayat of village Bhajjal could not use the suit site. Answering defendants denied other averments and prayed for dismissal of the suit.

4. Defendant No.3 filed separate written statement taking preliminary objections that the plaintiff has no locus-standi to file the

present suit ; the plaintiff is estopped from filing the present suit by his own act, conduct and admissions and the site plan of the plaintiff is correct. Answering defendant denied other averments and prayed for dismissal of the suit.

5. Replications were filed. From the pleading of the parties following issues were framed : -

1. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP
2. Whether the plaintiff has no locus standi to file the present suit ? OPD
3. Whether the suit is bad for misjoinder of necessary parties OPD
4. Relief.

6. The parties have led their respective evidence on the aforesaid issues. The trial Court after appraisal of the evidence vide judgment and decree dated 16.09.2011, dismissed the suit of the plaintiff.

7. Feeling aggrieved, the plaintiff preferred First appeal. The learned Additional District Judge, (Adhoc) Fast Track Court, Hoshiarpur vide judgment and decree dated 01.08.2014 dismissed the appeal of the plaintiff.

8. Still feeling dissatisfied with the aforesaid judgments and decrees dated 01.08.2014 and 16.09.2011, the present regular second appeal has been directed by the plaintiff/appellant.

9. The appellant in paragraph No.08 of the grounds of appeal, has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (i) Whether the judgment and decree passed by both the Courts below is a result of misreading and misinterpretation of the evidence and thus liable to be set aside ?
- (ii) Whether the plaintiff who is in peaceful, uninterrupted long possession and his possession duly recorded in the revenue record without payment of any lease, chakota etc. can be dispossessed without adopting any due course of law ?

10. I have heard learned counsel for the appellant and have gone through the case file with his able assistance

11. Learned counsel for the appellant has submitted that appellant has filed an application under Order 41 Rule 27 of the CPC for placing on record jamabandi for the year 1954-55 and report of the Girdwari dated 31.7.1965 by way of additional evidence. It is submitted that these documents proved the possession of the plaintiff over the suit property in the revenue record. The plaintiff and their predecessor-in-interest have been shown in possession of Khasra No.481 and suit of the plaintiff should have been decreed by both the Courts below. It is further submitted that the judgments of both the Courts below is the result of misreading and misinterpreting the evidence on the file. The plaintiff is in peaceful and uninterrupted possession over the suit property without payment of lease or chakota.

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

13. There is nothing on the record that judgments of both the Courts below are result of misread and misinterpreting the evidence on the file. Plaintiff can succeed only in case he is able to prove his possession

over the suit property. There is concurrent finding of fact recorded by both the Courts below that the plaintiff has failed to prove his possession over the suit property. That finding of fact is not the result of misreading and misinterpreting the evidence on the record.

14. The application under Section 41 read with Section 27 of the CPC moved before this Court is without any merit. With due diligence, those documents could have been produced before the trial Court or before the lower Appellate Court. Moreover, these documents will not improve the case of the appellant in any manner as the point in issue is the fact of possession at the time of filing the suit. Both the Courts below have given a finding that plaintiff is not able to prove his possession over the suit land. So, in these circumstances the application as well as appeal are without any merit.

15. Consequently, the appeal 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

September 03 , 2015

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